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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 73

STATE OF MINNESOTA, BY ITS ATTORNEY
GENERAL, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 21, 1963

CERTIORARI GRANTED OCTOBER 10, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 73

STATE OF MINNESOTA, BY ITS ATTORNEY
GENERAL, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE EIGHTH CIRCUIT

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**IN DISTRICT COURT OF COOK COUNTY,
ELEVENTH JUDICIAL DISTRICT**

STATE OF MINNESOTA, by HARRY H. PETERSON, Its Attorney
General, Petitioner,

VS.

PAUL QUODONCE, M. L. BURNS, as Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent, Me Shaix, Unknown Heirs of Me Shaix, Deceased; Nancy McMillan Penay see, Louise May-maush-kaw-aush, Edward Plante, Louise Plante, Theodore Plante, Unknown Heirs of Louise May-maush-kaw-aush, Narcisse Weesh-koob, Joseph Weesh-koob, Cecilia Weesh-koob Beargrease, Catherine Scott (Mrs. Amyotte), Unknown Heirs of Narcisse Weesh-koob, Deceased; Unknown Heirs of Catherine Scott (Mrs. Amyotte), Deceased; Josetta Frost, John Caribo (May-ah-o-say), Sah-gah-sheak, John Mitchell, Unknown Heirs of John Mitchell, Deceased; Unknown Heirs of John Caribo, Deceased; Mary Mitchell, Sah-man-equay-gah-bo, Joseph Long Body (O tah tah gay), Unknown Heirs of Joseph Long Body, Deceased; Joseph Long Body, Jr., Ah-zha-day-gwan-a beke (Mrs. John Zimmerman); William Howensten, Unknown Heirs of William Howensten, Deceased; Annie Howensten, Unknown Heirs of Annie Howensten, Deceased; Nancy Thomas, (Hunter); and the United States of America; Also All Other Persons Unknown Claiming Any Right, Title, Estate, Interest or Lien in the Real Estate Described in the Petition Herein, Respondents

PETITION—Filed February 6, 1936

In the Matter of the Condemnation of Certain Lands for
Trunk Highway Purposes

[fol. 3] To the above named court the State of Minnesota brings this petition and respectfully states and alleges:

I

That these proceedings are taken in the name of and in behalf of the State of Minnesota by Harry H. Peterson, its

Attorney General, and at the request of N. W. Elsberg, the duly appointed, qualified and acting Commissioner of Highways of the State of Minnesota; that said Commissioner of Highways is by Chapter 323, Laws 1921, charged with the designation, construction, location, reconstruction, improvement and maintenance of trunk highways within said state, and authorized and empowered to acquire by condemnation, as provided by statute, all rights of way needed in laying out and constructing said trunk highways.

II

That said Commissioner of Highways has heretofore duly located and designated as Constitutional Trunk Highway Number One, now designated as Trunk Highway Number 61, a trunk highway upon and passing over the lands herein described.

III

That said Commissioner of Highways has duly determined to acquire and desires to acquire and take by these proceedings the lands hereinafter described for the purpose of laying out, constructing, improving and maintaining thereon a trunk highway, the same being a part of Constitutional Trunk Highway Number One, now designated as Trunk Highway Number 61, and has determined that it is necessary that the same be taken for public use; but no claim to or interest in any buildings or structures on said lands is to be obtained by the petitioner, and all buildings and structures on any of said lands are to remain the property of the owners of said premises, but are to be removed from the lands taken for such right of way.

IV

That the lands desired and proposed to be so taken are situate in Cook County, Minnesota, and are described as follows, and that the names of all persons appearing of record or known to your petitioner to be the owners of said lands or interested therein, including all whom your petitioner has been able by investigation and inquiry to discover, together with the nature of the ownership of each as nearly as can be ascertained, are as follows:

[fol. 4] Parcel 5 (61=1-47-3)—

All that part of the two following described tracts:

1. Government Lot 5 of section 5, township 62 north, range 5 east;

2. Southwest quarter of the northwest quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$) of section 5, township 62 north, range 5 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the west line of said section 5, distant 150.9 feet north of the west quarter corner thereof; thence run northeasterly at an angle of 72°08' with said west section line for a distance of 1461.9 feet and there terminating;

containing 12.79 acres, more or less.

Names of persons interested in said Parcel 5 and nature of interest:

| Name | Nature of Interest |
|--------------------------|---|
| Paul Quodonce | Owner under Indian Allotment |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| United States of America | Holder of Fee in Trust |

Parcel 6 (61=1-47-3)

All that part of the following described tract:

Government Lot 6 of section 5, township 62 north, range 5 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the west line of said section 5, distant 150.9 feet north of the west quarter corner thereof; thence run northeasterly at an angle of 72°08' with said west section line for a distance of 1461.9 feet; thence deflect to the right on a 1°46' curve, delta angle 15°34', for a distance

of 881.1 feet; thence on tangent to said curve for a distance of 500 feet and there terminating;
containing 12.32 acres, more or less.

Names of persons interested in said Parcel 6 and nature of interest:

[fol. 5]

| Name | Nature of Interest |
|--------------------------------------|---|
| Me Shaix | Owner under Indian Allotment |
| Unknown heirs of Me Shaix, deceased; | Claimants of an interest |
| Nancy McMillan Penay see) | |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| United States of America | Holder of Fee in Trust |

Parcel 7 (61 = 1-47-3)

All that Part of the following described tract:

Government Lots 7 and 8 of section 5, Township 62 north, range 5 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the west line of said Government Lot 7, distant 612 feet south of the northwest corner thereof; thence run northeasterly at an angle of 89°30' with the west line thereof; for a distance of 937.3 feet; thence deflect to the left on a 2°00' curve, delta angle 37°20', for a distance of 1856.7 feet; thence on tangent to said curve for a distance of 200 feet and there terminating;
containing 24.38 acres, more or less.

Names of persons interested in said Parcel 7 and nature of interest:

| Name | Nature of Interest |
|---------------------------|-------------------------------|
| Louise May-maush-kaw-aush | Owners under Indian Allotment |
| Edward Plante | |
| Louise Plante | |
| Theodore Plante | |

| Name | Nature of Interest |
|--|---|
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| United States of America | Holder of Fee in Trust |
| Unknown heirs of Louise May-maush-kaw-aush | Claimants of an interest |

[fol. 6] Parcel 11 (61 = 1-47-3)—

All that part of the following described tract:

Government Lot 3 of section 33, township 63 north, range 5 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the east line of said Government Lot 3, distant 536 feet north of the southeast corner thereof; thence run southwesterly at an angle of $77^{\circ}20'$ with the east line thereof for a distance of 1065.2 feet; thence deflect to the left on a $1^{\circ}00'$ curve, delta angle $24^{\circ}56'$, for a distance of 500 feet and there terminating;

containing 12.57 acres, more or less.

Names of persons interested in said Parcel 11 and nature of interest:

| Name | Nature of Interest |
|---|-------------------------------|
| Narcisse Weesh-koob) | Owners under Indian Allotment |
| Joseph Weesh-koob) | |
| Cecilia Weesh-koob Bear-grease) | |
| Catherine Scott (Mrs. Amyotte)) | |
| Unknown heirs of) | |
| Narcisse Weesh-koob, deceased;) | Claimants of an interest |
| Unknown heirs of) | |
| Catherine Scott (Mrs. Amyotte,) deceased,) | |

| Name | Nature of Interest |
|--------------------------|---|
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| United States of America | Holder of Fee in Trust |

Parcel 15 (S1 = 1-47-3) —

All that part of the following described tract:

Southwest quarter of the northeast quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$) of section 34, township 63 north, range 5 east; which lies within a distance of 200 feet on each side of the following described line:

[fol. 7] Beginning at a point on the east line of said section 34, distant 1128 feet south of the northeast corner thereof; thence run southwesterly at an angle of 40°20' with said east section line for a distance of 453.8 feet; thence deflect to the right on a 1°30' curve, delta angle 15°30' for a distance of 1033.3 feet; thence on tangent to said curve for a distance of 697 feet; thence deflect to the left on a 2°12' curve, delta angle 18°44', for a distance of 600 feet and there terminating;

containing 5.34 acres, more or less.

Names of persons interested in said Parcel 15 and nature of interest:

| Name | Nature of Interest |
|----------------------------|----------------------------|
| Narcisse Weesh-koob) | |
| Joseph Weesh-koob) | |
| Cecilia Weesh-koob Bear-) | Owners under Indian Allot- |
| grease) | ment |
| Catherine Scott (Mrs.) | |
| Amyotte)) | |
| Unknown heirs of) | |
| Narcisse Weesh-koob,) | |
| deceased) | |
| Unknown heirs of) | Claimants of an interest |
| Catherine Scott (Mrs.) | |
| Amyotte,) deceased;) | |

| Name | Nature of Interest |
|--------------------------|---|
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| United States of America | Holder of Fee in Trust |

Parcel 20 (61=1-47-3)—

All that part of the two following described tracts:

1. Government Lot 1 of section 26, township 63 north, range 5 east;

2. Northeast quarter of the southeast quarter. (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of section 26, township 63 north, range 5 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the east and west quarter line of section 25, township 63 north, range 5 east, distant 1497 feet [fol. 8] east of the west quarter corner thereof; thence run southwesterly at an angle of 44°00' with said east and west quarter line for a distance of 1867.3 feet; thence deflect to the right on a 1°30' curve, delta angle 33°42', for a distance of 2000 feet and there terminating;

containing 14.10 acres, more or less.

Names of persons interested in said Parcel 20 and nature of interest:

| Name | Nature of Interest |
|--------------------------|---|
| Josetta Frost | Owner under Indian Allotment |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| United States of America | Holder of Fee in Trust |

Parcel 23 (61=1-47-3)

All that part of the following described tract:

Southeast quarter of the southeast quarter SE $\frac{1}{4}$ SE $\frac{1}{4}$ of section 24, township 63 north, range 5 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the south line of said section 24 distant 872 feet west of the southeast corner thereof; thence run northeasterly at an angle of 43°40' with said south section line for a distance of 1500 feet and there terminating excepting therefrom the right of way of existing highway containing 11.43 acres, more or less.

Names of persons interested in said Parcel 23 and nature of interest:

[fol. 9]

| Name | Nature of Interest |
|----------------------------|---|
| John Caribo (May-ah-o-say) | Owner under Indian Allotment |
| Sah-gah-sheak | Claimants of an interest |
| John Mitchell | |
| Unknown heirs of | |
| John Mitchell, deceased; | |
| Unknown heirs of | |
| John Caribo, deceased; | |
| Mary Mitchell | |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minn. and Special Disbursing Agent. |
| United States of America | Holder of Fee in Trust |

Parcel 24 (61=1-47-3)—

All that part of the two following described tracts:

1. Government Lots 4 and 5 of section 19, township 63 north, range 6 east;

2. Northwest quarter of the southwest quarter (NW $\frac{1}{4}$ SW $\frac{1}{4}$) of section 19, township 63 north, range 6 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the west line of said section 19, distant 1759.6 feet south of the west quarter corner thereof; thence run northeasterly at an angle of 44°24' with said west section line for a distance of 2614.5 feet; thence deflect to the right on a 1°00' curve, delta angle 10°00', for a distance of 200 feet and there terminating;

containing 23.29 acres, more or less.

Names of persons interested in said Parcel 24 and nature of interest:

[fol. 10]

| Name | Nature of Interest |
|---|---|
| Sah-man-equay-gah-bo | Owner under Indian Allotment |
| Joseph Long Body (O tah tah gay) | |
| Unknown heirs of Joseph Long Body deceased; | |
| Joseph Long Body, Jr. | |
| Ah-zha-day-gwam-a beke, (Mrs. John Zimmerman) | Claimants of an interest |
| William Howensten, | |
| Unknown heirs of William Howensten deceased; | |
| Annie Howensten | |
| Unknown heirs of Annie Howensten, deceased; | |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| United States of America | Holder of fee in trust |

Parcel 25 (61=1-47-3)

All that part of the following described tract:
Government Lot 3 of section 19, township 63 north, range
6 east;

which lies within a distance of 200 feet on each side of the
following described line:

Beginning at a point on the west line of said section 19,
distant 1759.6 feet south of the west quarter corner thereof;
thence run northeasterly at an angle of $44^{\circ}24'$ with said west
section line for a distance of 2614.5 feet; thence deflect to
the right on a $1^{\circ}00'$ curve, delta angle $10^{\circ}00'$, for a distance
of 1000 feet; thence on tangent to said curve for a distance
of 200 feet and there terminating;

containing 9.45 acres, more or less.

Names of persons interested in said Parcel 25 and nature
of interest:

[fol. 11]

| Name | Nature of Interest |
|--------------------------|---|
| Nancy Thomas (Hunter) | Owner under Indian Allotment |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota; and Special Disbursing Agent |
| United States of America | Holder of Fee in Trust |

Wherefore, Your petitioner prays that such proceedings may be had herein as are provided by law; that it be adjudged that said taking is authorized by law; that the use for which said property is proposed to be taken is a public use; that the petitioner obtain the right to construct and maintain temporary snow fences upon the tracts and parcels of land herein described and the lands adjacent thereto, as provided by law; that the petitioner shall have the exclusive control and regulation of the culture and cutting of all grasses, shrubs, trees and natural growth now existing on the lands being acquired herein and the planting of

new grasses, shrubs and trees thereon; that three competent and disinterested persons, residents of said Cook County, be appointed to ascertain and report the amount of damages that will be sustained by the several owners and persons interested on account of such taking; that the time and place of the first meeting and the compensation of said commissioners be fixed; and that an order be made herein pursuant to the statute in such case made and provided:

State of Minnesota, by Harry H. Peterson, Attorney General, Ordner T. Bundlie, Assistant Attorney General, Attorneys for Petitioner, 1246 University Avenue, St. Paul, Minnesota.

Duly sworn to by Ordner T. Bundlie. Jurat omitted in printing.

[fol. 12] [File endorsement omitted.]

IN DISTRICT COURT OF COOK COUNTY

NOTICE OF FILING OF PETITION—Filed April 9, 1936

To the Respondents above named:

You and each of you are hereby notified that the above named petitioner will, on the ninth day of April, 1936 at 1:00 o'clock P. M. of said day, or as soon thereafter as counsel can be heard, present to the court above named, at chambers in the court house, at Grand Marais, Cook County, Minnesota, a petition in the above entitled proceeding for the condemnation of certain lands for trunk highway purposes, which said petition is now on file in the office of the clerk of said court.

The objects of said petition are to have the lands hereinafter described condemned and taken by the petitioner for the right of way for the laying out, constructing, improving and maintaining thereon of a trunk highway, the same being a part of Constitutional Trunk Highway Number One, now designated as Trunk Highway Number 61, and to have the court determine and adjudge that the use for which such lands are sought to be acquired is a public use, that said taking is authorized by law, that said petitioner obtain the right to construct and maintain temporary snow fences upon the

tracts and parcels of land herein described and the lands adjacent thereto as provided by law, that the petitioner shall have the exclusive control and regulation of the culture and cutting of all grasses, shrubs, trees, and natural growth now existing on the lands being acquired herein and the planting of any grasses, shrubs and trees thereon, to have the court appoint commissioners to ascertain and report the amount [fol. 13] of damages that will be sustained by the several owners and the persons interested on account of such taking, and to have made an order of the court herein pursuant to the statute in such case made and provided; and you and each of you are entitled to and may appear before said court at said time and place and offer evidence relating thereto and show cause, if any, why said petition should not be granted.

The lands desired and proposed to be so taken are situate in Cook County, Minnesota, and are described as follows and the names of all persons appearing of record or known to your petitioner to be the owners of said lands or interested therein, including all whom your petitioner has been able by investigation and inquiry to discover, together with the nature of the ownership of each as nearly as can be ascertained, are as follows:

Parcel 5 (61-147-3)—

All that part of the two following described tracts:

1. Government Lot 5 of section 5, township 62 north, range 5 east;

2. Southwest quarter of the northwest quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$) of section 5, township 62 north, range 5 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the west line of said section 5, distant 150.9 feet north of the west quarter corner thereof; thence run northeasterly at an angle of 72°08' with said west section line for a distance of 1461.9 feet and there terminating;

containing 12.79 acres, more or less.

Names of persons interested in said Parcel 5 and nature of interest:

| Name | Nature of Interest |
|--------------------------|---|
| Paul Quodonce | Owner under Indian Allotment. |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| United States of America | Holder of Fee in Trust |

[fol. 14] Parcel 6 (61 = 1-47-3)

All that part of the following described tract:

Government Lot 6 of section 5, township 62 north, range 5 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the west line of said section 5, distant 150.9 feet north of the west quarter corner thereof; thence run northeasterly at an angle of 72°08' with said west section line for a distance of 1461.9 feet; thence deflect to the right on a 1°46' curve, delta angle 15°34', for a distance of 881.1 feet; thence on tangent to said curve for a distance of 560 feet and there terminating;

containing 12.32 acres, more or less.

Names of persons interested in said Parcel 6 and nature of interest:

| Name | Nature of Interest |
|--------------------------------------|---|
| Me Shaix | Owner under Indian Allotment |
| Unknown heirs of Me Shaix, deceased; | Claimants of an interest |
| Nancy McMillan Penay see) | |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| United States of America | Holder of Fee in Trust |

Parcel 7 (61 = 1-47-3)

All that Part of the following described tract:

Government Lots 7 and 8 of section 5, township 62 north, range 5 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the west line of said Government Lot 7, distant 612 feet south of the northwest corner thereof; thence run northeasterly at an angle of $89^{\circ}30'$ with the west line thereof; for a distance of 937.3 feet; thence deflect to the left on a $2^{\circ}00'$ curve, delta angle $37^{\circ}20'$, for a [fol. 15] distance of 1866.7 feet; thence on tangent to said curve for a distance of 200 feet and there terminating;

containing 24.38 acres, more or less.

Names of persons interested in said Parcel 7 and nature of interest:

| Name | Nature of Interest |
|--|---|
| Louise May-maush-kaw-aush |) |
| Edward Plante |) |
| Louise Plante |) |
| Theodore Plante |) |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| United States of America | Holder of Fee in Trust |
| Unknown heirs of Louise May-maush-kaw-aush | Claimants of an interest |

Parcel 11 (61 = 1-47-3) —

All that part of the following described tract:

Government Lot 3 of section 33, township 63 north, range 5 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the east line of said Government Lot 3, distant 536 feet north of the southeast corner thereof; thence run southwesterly at an angle of $77^{\circ}20'$ with the east line thereof for a distance of 1065.2 feet; thence deflect to the left on a $1^{\circ}00'$ curve, delta angle $24^{\circ}56'$, for a distance of 500 feet and there terminating;

containing 12.57 acres, more or less.

Names of persons interested in said Parcel 11 and nature of interest:

[fol. 16]

| Name | Nature of Interest |
|---|---|
| Narcisse Weesh-koob) | Owners under Indian Allotment |
| Joseph Weesh-koob) | |
| Cecilia Weesh-koob Bear-grease) | |
| Catherine Scott (Mrs. Amyotte)) | |
| Unknown heirs of) | |
| Narcisse Weesh-koob, deceased;) | Claimants of an interest |
| Unknown heirs of) | |
| Catherine Scott (Mrs. Amyotte,) deceased,) | |
| M. L. Burns) | |
| | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| United States of America | Holder of Fee in Trust |

Parcel 15 (61 = 1-47-3) —

All that part of the following described tract:

Southwest quarter of the northeast quarter ($SW\frac{1}{4}$ $NE\frac{1}{4}$) of section 34, township 63 north, range 5 east; which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the east line of said section 34, distant 1128 feet south of the northeast corner thereof; thence run southwesterly at an angle of $40^{\circ}20'$ with said

east section line for a distance of 453.8 feet; thence deflect to the right on a $1^{\circ}30'$ curve, delta angle $15^{\circ}30'$ for a distance of 1033.3 feet; thence on tangent to said curve for a distance of 697 feet; thence deflect to the left on a $2^{\circ}12'$ curve, delta angle $18^{\circ}44'$, for a distance of 600 feet and there terminating;

containing 5.34 acres, more or less.

Names of persons interested in said Parcel 15 and nature of interest:

[fol. 17]

| Name | Nature of Interest |
|----------------------------|---|
| Narcisse Weesh-koob) | |
| Joseph Weesh-koob) | |
| Cecilia Weesh-koob Bear-) | |
| grease) | Owners under Indian Allot- |
| Catherine Scott (Mrs.) | ment |
| Amyotte) | |
| Unknown heirs of) | |
| Narcisse Weesh-koob,) | |
| deceased) | |
| Unknown heirs of) | Claimants of an interest |
| Catherine Scott (Mrs.) | |
| Amyotte,) deceased;) | |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| United States of America | Holder of Fee in Trust |

Parcel 20 (61=1-47-3)

All that part of the two following described tracts:

1. Government Lot 1 of section 26, township 63 north, range 5 east;

2. Northeast quarter of the southeast quarter ($NE\frac{1}{4}$ $SE\frac{1}{4}$) of section 26, township 63 north, range 5 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the east and west quarter line of section 25, township 63 north, range 5 east, distant 1497 feet east of the west quarter corner thereof; thence run south-easterly at an angle of $44^{\circ}00'$ with said east and west quarter line for a distance of 1867.3 feet; thence deflect to the right on a $1^{\circ}30'$ curve, delta angle $33^{\circ}42'$, for a distance of 2000 feet and there terminating;

containing 14.10 acres, more or less.

Names of persons interested in said Parcel 20 and nature of interest:

Parcel 18]

| Name | Nature of Interest |
|--------------------------|---|
| Ossetta Frost | Owner under Indian Allotment |
| L. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| United States of America | Holder of Fee in Trust |

Parcel 23 (61=1-47-3)

All that part of the following described tract:

Southeast quarter of the southeast quarter ($SE\frac{1}{4} SE\frac{1}{4}$) of section 24, township 63 north, range 5 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the south line of said section 24, distant 872 feet west of the southeast corner thereof; thence run northeasterly at an angle of $43^{\circ}40'$ with said south section line for a distance of 1500 feet and there terminating;

excepting therefrom the right of way of existing highway;

containing 11.43 acres, more or less.

Names of persons interested in said Parcel 23 and nature of interest:

| Name | Nature of Interest |
|----------------------------|---|
| John Caribo (May-ah-o-say) | Owner under Indian Allotment |
| Sah-gah-sheak | Claimants of an interest |
| John Mitchell | |
| Unknown heirs of | |
| John Mitchell, deceased; | |
| Unknown heirs of | |
| John Caribo, deceased; | |
| Mary Mitchell | |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minn. and Special Disbursing Agent. |

United States of America . Holder of Fee in Trust

[fol. 19] Parcel 24 (61=1-47-3)—

All that part of the two following described tracts:

1. Government Lots 4 and 5 of section 19, township 63 north, range 6 east;

2. Northwest quarter of the southwest quarter (NW $\frac{1}{4}$ SW $\frac{1}{4}$) of section 19, township 63 north, range 6 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the west line of said section 19, distant 1759.6 feet south of the west quarter corner thereof; thence run southwesterly at an angle of 40°20' with said section line for a distance of 2614.5 feet; thence deflect to the right on a 1°00' curve, delta angle 10°00', for a distance of 200 feet and there terminating;

containing 23.29 acres, more or less.

Names of persons interested in said Parcel 24 and nature of interest:

| Name | Nature of Interest |
|----------------------|------------------------------|
| Sah-man-equay-gah-bo | Owner under Indian Allotment |

Joseph Long Body (O tãh)
 tah gay)

Unknown heirs of Joseph)

Long Body deceased;)

Joseph Long Body, Jr.)

Ah-zha-dây-gwam-a beke)

(Mrs. John Zimmerman))

William Howensten)

Unknown heirs of)

William Howensten,)

deceased;)

Annie Howensten)

Unknown heirs of)

Annie Howensten,)

deceased;)

M. L. Burns

Claimants of an interest

As Superintendent of the
 Consolidated Chippewa
 Agency at Cass Lake, Min-
 nesota, and Special Disbur-
 sing Agent

United States of America

Holder of fee in trust

[fol. 20]

Parcel 25 (61=1-47-3)

All that part of the following described tract:

Government Lot 3 of section 19, township 63 north, range
 6 east;

which lies within a distance of 200 feet on each side of the
 following described line:

Beginning at a point on the west line of said section 19,
 distant 1759.6 feet south of the west quarter corner thereof;
 thence run northeasterly at an angle of 44°24' with said west
 section line for a distance of 2614.5 feet; thence deflect to
 the right on a 1°00' curve, delta angle 10°00', for a distance
 of 1000 feet; thence on tangent to said curve for a distance
 of 200 feet and there terminating;

containing 9.45 acres, more or less.

Names of persons interested in said Parcel 25 and nature of interest:

| Name | Nature of Interest |
|---|---|
| Nancy Thomas (Hunter) | Owner under Indian Allotment |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| United States of America | Holder of Fee in Trust |
| State of Minnesota, by Harry H. Peterson, Attorney General, Ordner T. Bundlie, Assistant Attorney General. Attorneys for Petitioner, 1246 University Avenue, St. Paul, Minnesota. | |

[File endorsement omitted.]

[fol. 21] STATE OF MINNESOTA,
County of Cook, ss:

I hereby certify and return, that after due and diligent search, I have been unable to find the within defendants Paul Quodonce and Cecil Weesh-koob Beargrease within my said county, and the defendants aforesaid cannot be found within said Cook County.

Dated this 5th day of March, 1936,

Chas. Taylor, Sheriff Cook County, Minn.

Sheriff's Fees, Return \$2.00

Mileage \$

STATE OF MINNESOTA,
County of Cass, ss:

I hereby certify and return that on the 2nd day of March 1936 at the Village of Cass Lake in said County and State I served the attached Notice upon M. L. Burns as Superintend-

ent of the Consolidated Chippewa Agency at Cass Lake, Minnesota and special disbursing agent therein named personally by handing to and leaving with him true and correct copy thereof.

O. E. Meny, Sheriff of Cass County, Minnesota.

| | |
|-------------------|--------|
| Sheriff's Mileage | \$5.40 |
| Copy | \$1.00 |
| Total | \$6.40 |

STATE OF MINNESOTA

County of Cook, ss:

I hereby certify and return, that at the Village of Grand Marsis, in said County of Cook and State of Minnesota, on the 4th day of March 1936 I served the attached Notice upon Joseph Weesh-kpob and Mrs. John Zimmerman, two of the persons therein named by handing to and leaving with each of them a true and correct copy thereof; And I further certify and return that at Grand Portage in said County of Cook and State of Minnesota on the 5th day of March 1936 I served the attached Notice upon Joseph Longbody, Junior and Nancy Thomas Hunter two of said persons [fol. 22] therein named by handing to and leaving with each of them a true and correct copy thereof.

Dated this 5th day of March 1936.

Chas. Taylor, Sheriff of Cook County, Minnesota.

Fees:

| | |
|---------|---------|
| Service | \$4.00 |
| Travel | \$6.20 |
| Total | \$10.20 |

[STATE] OF MINNESOTA,

County of Ramsey, ss:

I hereby certify and return, that at the City of St. Paul, County and State aforesaid, on the 17th day of March A. D. 1936 I served the Notice In the Matter of the Condemnation of Certain Lands for Trunk Highway Purposes hereto attached upon the within named George F. Sullivan, United

States District Attorney for Minnesota personally, by handing to and leaving with him a true and correct copy thereof.

Dated this 17th day of March A. D. 1936.

Thomas J. Gibbons, Sheriff of Ramsey, County, Minn., by Ienes S. Moran, Deputy.

| | |
|------------------------|--------|
| Sheriff's fees Service | \$1.00 |
| Travel | .20 |
| | <hr/> |
| | \$1.20 |

STATE OF MINNESOTA,
County of St. Louis, ss:

I hereby certify and return, that at Duluth in the County and State aforesaid, on the 12th day of March A. D. 1936, I served the Notice hereto attached upon the within named Paul Quodonce personally by handing to and leaving with him a true and correct copy thereof.

Dated at Duluth, Minnesota, this 12th day of March, 1936.

Samuel M. Owens, Sheriff, St. Louis County, Minnesota, by Frank G. Dickson, Deputy Sheriff.

[fol. 23]

| | |
|-------------------------|--------|
| Sheriff's Fees, Service | \$1.00 |
| Travel | \$.60 |
| | <hr/> |
| Total | \$1.60 |

IN DISTRICT COURT OF COOK COUNTY

[Title omitted]

PETITION FOR REMOVAL OF CAUSE TO FEDERAL COURT—Filed
April 11, 1936

To the Honorable Judges of the District Court of the State of Minnesota, Eleventh Judicial District, In and For the County of Cook:

Now comes the United States of America, one of the respondents in the above entitled cause, by George F. Sullivan, its United States Attorney for the District of Minnesota,

appearing specially and for no other purpose, and respectfully states to the Court that your petitioner is a sovereign; that the respondent Mark L. Burns, as Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and special disbursing agent, is an agent and officer of your petitioner; that the remaining respondents are Chippewa Indian wards of your petitioner.

That this is an action of a civil nature at law and is brought by the State of Minnesota under the eminent domain laws of the State of Minnesota, the same being Chapter 41, Mason's Minnesota Statutes, 1927, for the purpose of condemning an easement for highway purposes across certain lands owned by your petitioner and by it held in trust for the Chippewa Indian wards of your petitioner, the same being respondents above named.

That this is an action which arises under the constitution and laws of the United States, inasmuch as the United States is made a party hereto, and the United States is an indispensable party hereto; that the rights of the Indian wards of the United States are involved, as well as the relationship of the said wards to the United States, which matters are regulated and governed by the United States, and by reason of the premises jurisdiction of the subject matter of this [fol. 24] action is conferred upon the District Court of the United States of America.

That by reason of the value of the lands described in the petition, the amount in controversy, exclusive of interest and costs, exceeds the sum or value of Three Thousand (\$3,000) Dollars.

That as appears in the stipulation hereto attached, entered into between George F. Sullivan, United States Attorney for the District of Minnesota, and attorney for the respondents, and O. T. Bundlie, Assistant Attorney General of the State of Minnesota, and attorney for petitioner, notice of this petition is expressly waived and consent is given to the transfer herein prayed. That a formal bond is expressly waived in this matter.

Wherefore, your petitioner prays this Honorable Court to proceed no further herewith except to make an order for the removal of this cause to the said District Court of the United States for the District of Minnesota, Fifth Division, and to accept this petition and cause the record herein to be re-

moved into the said District Court of the United States for the District of Minnesota, Fifth Division, at Duluth, Minnesota.

Dated at St. Paul, Minnesota, this 7th day of April, 1936.

George F. Sullivan, United States Attorney for the District of Minnesota.

IN DISTRICT COURT OF COOK COUNTY

**STIPULATION FOR REMOVAL OF CAUSE TO FEDERAL COURT, ETC.—
Filed April 11, 1936**

It is hereby stipulated and agreed, by and between Harry H. Peterson, Attorney General of the State of Minnesota, by O. T. Bundlie, Assistant Attorney General and attorney for petitioner above named, and George F. Sullivan, United States Attorney for the District of Minnesota, attorney for respondent United States of America, appearing specially for the United States of America and the remainder of the respondents above named:

1

That a general appearance is hereby entered in the above entitled cause on behalf of all respondents above named, save and except the United States of America, which is appearing specially for the sole purposes of effecting removal of the above entitled cause to the United States District Court, and other objects hereinafter set out.

[fol. 25]

2

That the above entitled cause may be removed to the United States District Court for the District of Minnesota for further proceedings, and the consent of the petitioner is expressly given to the said transfer.

3

That notice of the petitioner for removal is hereby expressly waived by the petitioner.

4

That the good faith and credit of the respondent United States of America be accepted as good and sufficient surety

for good faith of the removal and any costs that might be incurred, a formal bond according to the statute in such case made and provided, being expressly waived by the petitioner.

5

That the cause be set on for hearing before the Honorable Robert C. Bell on the 18th day of May, 1936, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, in the court room in the Federal Building in the city of Duluth, Minnesota, at which time the petitioner of the State of Minnesota may be heard and such proceedings had thereon as prayed in the said petition.

6

That further notice of the time and place of presentation of the said petition is hereby expressly waived by all of the respondents above named.

Dated at St. Paul, Minnesota, this 7th day of April, 1936.
George F. Sullivan, United States Attorney for the
District of Minnesota. O. T. Bundlie, Assistant At-
torney General, State of Minnesota.

[File endorsement omitted.]

[fol 26] IN DISTRICT COURT OF COOK COUNTY

[Title omitted]

ORDER OF REMOVAL

The Court having examined the petition of George F. Sullivan, United States Attorney, and the stipulation thereto attached, the said petition is accordingly accepted, and

It Is Hereby Ordered that no further proceedings be had herein, and that the cause be removed for hearing in the District Court of the United States of America for the District of Minnesota, Fifth Division, at Duluth, Minnesota.

Dated this 8th day of April, 1936.

By the Court.

C. R. Magney, Judge.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 27] IN DISTRICT COURT OF COOK COUNTY

[Title omitted]

**AFFIDAVIT AS TO NON-RESIDENCE OF CERTAIN RESPONDENTS,
ETC.—Filed April 16, 1936**

[fol. 28] Bert McMullen, being duly sworn, says that he is one of the attorneys for the State of Minnesota, petitioner herein; that the respondents, Edward Plante, Louise Plante, Theodore Plante, and Josetta Frost, are not residents of the State of Minnesota; and that affiant believes that said respondents are not residents of the State of Minnesota; that on the 18th day of February, 1936 he deposited in the post office at St. Paul, Minnesota, properly enveloped, with postage fully prepaid, a true and correct copy of the notice herein, addressed to each of the following named respondents at their respective places of residence, to-wit:

Edward Plante, 2801 N. Palmer Street, Milwaukee, Wisconsin.

Louise Plante, 2801 N. Palmer Street, Milwaukee, Wisconsin.

Theodore Plante, Box 800, City Hall, New York, New York.

Josetta Frost, Odanah, Wisconsin.

And at the place of residence and post office address of each of said respondents is as hereinabove stated.

Affiant further states that he believes the respondents, Me Shaix, Nancy McMillian Penay see, Louise May-maush-kaw-aush, Narcisse Weesh-kooob, Catherine Scott (Mrs. Amyotte), John Caribo (May-ah-osay), Sah gah sheak, John Mitchell, Mary Mitchell, Sah-man-equay-gah-bo, Joseph Long Body (O tah tah gay), William Howenstine, and Annie Howenstine are not residents of the State of Minnesota; that the places of residence of said respondents are unknown to your petitioner and to affiant; and that after diligent inquiry the places of residence of said respondents cannot be ascertained by affiant.

Bert McMullen.

Subscribed and sworn to before me this 18th day of February, 1936. J. R. Stoltenberg, Notary Public, in and for and Residing in Hennepin County, Minn. My commission expires May 30, 1940. (Notarial Seal.)

[fol. 29] IN DISTRICT COURT OF COOK COUNTY

[Title omitted]

AFFIDAVIT AS TO PUBLICATION OF NOTICE—Filed April 16,
1936

NOTICE

To the Respondents above named:

You and each of you are hereby notified that the above named petitioner will, on the 9th day of April, 1936, at 1 [fol. 30] o'clock P. M. of said day, or as soon thereafter as counsel can be heard, present to the court above named, at chambers in the court house, at Grand Marais, Cook County, Minnesota, a petition in the above entitled proceeding for the condemnation of certain lands for trunk highway purposes, which said petition is now on file in the office of the clerk of said court.

The objects of said petition are to have the lands hereinafter described condemned and taken by the petitioner for right of way for the laying out, constructing, improving and maintaining thereon of a trunk highway, the same being a part of Constitutional Trunk Highway Number one, now designated [at] Trunk Highway Number 61, and to have the court determine and adjudge that the use for which such lands are sought to be acquired is a public use, that said taking is authorized by law, that said petitioner obtained the right to construct and maintain temporary snow fences upon the tracts and parcels of land herein described and the lands adjacent thereto as provided by law, that the petitioner shall have the exclusive control and regulation of the culture and cutting of all grasses, shrubs, trees, and natural growth now existing on the lands being acquired herein and the planting of any grasses, shrubs and trees thereon, to have the court appoint commissioners to ascertain and report the amount of damages that will be sustained by the several owners and the persons interested on account of such taking, and to have made an order of the court herein pursuant [the] the statute in such case made and provided; and you and each of you are entitled to and may appear before said court at said time and place and offer evidence relating thereto and show cause, if any, why said petition should not be granted.

The lands desired and proposed to be so taken are situate in Cook County, Minnesota, and are described as follows and the names of all persons appearing of record or known to your petitioner to be the owners of said lands or interested therein, including all whom your petitioner has been able by investigation and inquiry to discover, together with the nature of the ownership of each as nearly as can be ascertained, are as follows:

Parcel 5 (61-1-47-3)—

All that part of the two following described tracts:

1. Government Lot 5 of section 5, township 62 north, range 5 east;

2. Southwest quarter of the northwest quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$) of section 5, township 62 north, range 5 east;

[fol. 31] which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the west line of said section 5, distant 150.9 feet north of the west quarter corner thereof; thence run northeasterly at an angle of 72°08' with said west section line for a distance of 1461.9 feet and there terminating;

containing 12.79 acres, more or less.

Names of persons interested in said Parcel 5 and nature of interest:

| Name | Nature of Interest |
|------------------------------|---|
| Paul Quodonce | Owner under Indian Allotment |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| The United States of America | Holder of Fee in Trust |

Parcel 6 (61-1-47-33)—

All that part of the following described tract:

Government Lot 6 of section 5, township 62 north, range 5 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the west line of said section 5, distant 150.9 feet north of the west quarter corner thereof; thence run northeasterly at an angle of $72^{\circ}08'$ with said west section line for a distance of 1461.9 feet; thence deflect to the right on a $1^{\circ}46'$ curve, delta angle $15^{\circ}34'$, for a distance of 881.1 feet; thence on tangent to said curve for a distance of 500 feet and there terminating;

containing 12.32 acres, more or less.

Names of persons interested in said Parcel 6 and nature of interest:

| [fol. 32] Name | Nature of Interest |
|---|---|
| Me Shaix | Owner under Indian Allotment |
| Unknown heirs of Me Shaix, deceased; | Claimants of an interest |
| Nancy McMillan Penay see) | |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |

The United States of America Holder of Fee in Trust

Parcel 7 (61-1-47-3)

All that Part of the following described tract:

Government Lots 7 and 8 of section 5, township 62 north, range 5 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the west line of said Government Lot 7, distant 612 feet south of the northwest corner thereof; thence run northeasterly at an angle of $89^{\circ}30'$ with the west line thereof; for a distance of 937.3 feet; thence deflect to the left on a $2^{\circ}00'$ curve, delta angle $37^{\circ}20'$, for a distance of 1866.7 feet; thence on tangent to said curve for a distance of 200 feet and there terminating;

containing 24.38 acres, more or less.

Names of persons interested in said Parcel 7 and nature of interest:

| Name | Nature of Interest |
|--|---|
| Louise May-maush-kaw-aush) | |
| Edward Plante) | |
| Louise Plante) | Owners under Indian Allotment |
| Theodore Plante) | |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| Unknown heirs of Louise May-maush-kaw-aush | Claimants of an interest |
| United States of America | Holder of Fee in Trust |

[fol. 33] Parcel 11 (61-147-3)—

All that part of the following described tract:

Government Lot 3 of section 33, township 63 north, range 5 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the east line of said Government Lot 3, distant 536 feet north of the southeast corner thereof; thence run southwesterly at an angle of $77^{\circ}20'$ with the east line thereof for a distance of 1065.2 feet; thence deflect to the left on a $1^{\circ}00'$ curve, delta angle $24^{\circ}56'$, for a distance of 500 feet and there terminating;

containing 12.57 acres, more or less.

Names of persons interested in said Parcel 11 and nature of interest:

| Name | Nature of Interest |
|----------------------------------|-------------------------------|
| Narcisse Weesh-koob) | |
| Joseph Weesh-koob) | |
| Cecelia Weesh-koob Beargrease) | Owners under Indian Allotment |
| Catherine Scott (Mrs. Amyotte)) | |

| Name | Nature of Interest |
|---|---|
| Unknown heirs of Narcisse Weesh-koob, deceased; | Claimants of an interest |
| Unknown heirs of Catherine Scott (Mrs. Amyotte,) deceased, | |
| M. L. Burns | |
| United States of America | |
| | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| | Holder of Fee in Trust |

Parcel 15 (61-1-47-3)—

All that part of the following described tract:

Southwest quarter of the northeast quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$) of section 34, township 63 north, range 5 east;

[fol. 34] which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the east line of said section 34, distant 1128 feet south of the northeast corner thereof; thence run southwesterly at an angle of 40°20' with said east section line for a distance of 453.8 feet; thence deflect to the right on a 1°30' curve, delta angle 15°30' for a distance of 1033.3 feet; thence on tangent to said curve for a distance of 697 feet; thence deflect to the left on a 2°12' curve, delta angle 18°44', for a distance of 600 feet and there terminating;

containing 5.34 acres, more or less.

Names of persons interested in said Parcel 15 and nature of interest:

| Name | Nature of Interest |
|----------------------------------|-------------------------------|
| Narcisse Weesh-koob) | Owners under Indian Allotment |
| Joseph Weesh-koob) | |
| Cecelia Weesh-koob Bear-) | |
| grease) | |
| Catherine Scott (Mrs. Amyotte)) | |

| Name | Nature of Interest |
|--|---|
| Unknown heirs of) Narcisse Weesh-koob,) deceased) | |
| Unknown heirs of) Catherine Scott (Mrs.) Amyotte,) deceased;) | Claimants of an interest |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Min- nesota, and Special Disbur- sing Agent |
| United States of America | Holder of Fee in Trust |

Parcel 20 (61-1-47-3)—

All that part of the two following described tracts:

1. Government Lot 1 of section 26, township 63 north, range 5 east;

2. Northeast quarter of the southeast quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of section 26, township 63 north, range 5 east; which lies within a distance of 200 feet on each side of the following described line:

[fol. 35] Beginning at a point on the east and west quarter line of section 25, township 63 north, range 5 east, distant 1497 feet east of the west quarter corner thereof; thence run southwesterly at an angle of 44 degrees 00 minutes with said east and west quarter line for a distance of 1867.3 feet; thence deflect to the right on a 1 degree 30 minute curve, delta angle 33 degrees 42 minutes, for a distance of 2000 feet and there terminating;

containing 14.10 acres, more or less.

Names of persons interested in said Parcel 20 and nature of interest:

| Name | Nature of Interest |
|-----------------|------------------------------|
| • Josetta Frost | Owner under Indian Allotment |

| Name | Nature of Interest |
|------------------------------|---|
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| The United States of America | Holder of Fee in Trust |

Parcel 23 (61-1-47-3)

All that part of the following described tract:
 Southeast quarter of the southeast quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$).
 of section 24, township 63 north, range 5 east;
 which lies within a distance of 200 feet on each side of the
 following described line:

Beginning at a point on the south line of said section 24,
 distant 872 feet west of the southeast corner thereof; thence
 run northeasterly at an angle of 43°40' with said south sec-
 tion line for a distance of 1500 feet and there terminating;
 excepting therefrom the right of way of existing highway;
 containing 11.43 acres, more or less.

Names of persons interested in said Parcel 23 and nature
 of interest:

[fol. 36]

| Name | Nature of Interest |
|------------------------------|---|
| John Caribo (May-ah-o-say) | Owner under Indian Allotment |
| Sah-gah-sheak) | |
| John Mitchell) | |
| Unknown heirs of) | |
| John Mitchell, deceased;) | Claimants of an interest |
| Unknown heirs of) | |
| John Caribo, deceased;) | |
| Mary Mitchell) | |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minn. and Special Disbursing Agent. |
| The United States of America | Holder of Fee in Trust |

Parcel 24 (61-1-47-3)—

All that part of the two following described tracts:

1. Government Lots 4 and 5 of section 19, township 63 north, range 6 east;

2. Northwest quarter of the southwest quarter (NW $\frac{1}{4}$ SW $\frac{1}{4}$) of section 19, township 63 north, range 6 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the west line of said section 19, distant 1759.6 feet south of the west quarter corner thereof; thence run northeasterly at an angle of 44°24' with said west section line for a distance of 2614.5 feet; thence deflect to the right on a 1°00' curve, delta angle 10°00', for a distance of 200 feet and there terminating;

containing 23.29 acres, more or less..

Names of persons interested in said Parcel 24 and nature of interest:

[fol. 37]

| Name | Nature of Interest |
|---|------------------------------|
| Sah-man-equay-gah-bo | Owner under Indian Allotment |
| Joseph Long Body (O tah tah gay) | |
| Unknown heirs of Joseph Long Body deceased | |
| Joseph Long Body, Jr. | |
| Ah-zha-day-gwam-a beke, (Mrs. John Zimmerman) | |
| William Howensten | Claimants of an interest |
| Unknown heirs of William Howensten, deceased; | |
| Annie Howensten | |
| Unknown heirs of Annie Howensten, deceased; | |

| Name | Nature of Interest |
|-------------|---|
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |

The United States of America Holder of fee in trust.

Parcel 25 (61-1-47-3)

All that part of the following described tract:

Government Lot 3 of section 19, township 63 north, range 6 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the west line of said section 19, distant 1759.6 feet south of the west quarter corner thereof; thence run northeasterly at an angle of $44^{\circ}24'$ with said west section line for a distance of 2614.5 feet; thence deflect to the right on a $1^{\circ}00'$ curve, delta angle $10^{\circ}00'$, for a distance of 1000 feet; thence on tangent to said curve for a distance of 200 feet and there terminating;

containing 9.45 acres, more or less.

Names of persons interested in said Parcel 25 and nature of interest:

[fol. 38]

| Name | Nature of Interest |
|-----------------------|---|
| Nancy Thomas (Hunter) | Owner under Indian Allotment |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |

The United States of America Holder of Fee in Trust

State of Minnesota, by Harry H. Peterson, Attorney General. Ordner T. Bundlie, Assistant Attorney General, Attorneys for Petitioner. 1246 University Avenue, St. Paul, Minnesota.

STATE OF MINNESOTA,
County of Cook, ss:

Leroy Raff being duly sworn, deposes and says that he now is and during all the times hereinafter mentioned has been the publisher and printer in charge of The Cook County News-Herald, a weekly newspaper printed and published in the Village of Grand Marais, in said Cook County, Minnesota, on Thursday of each week.

That he has knowledge of the facts and knows personally that the Quodonce Petition, a printed copy of which, cut and taken from the columns of said newspaper, is hereto attached, (and which is hereafter referred to as "said legal advertisement"), was inserted, printed and published in said newspaper once in each week for — weeks, and that all of said publications were made in the English language.

That said legal advertisement was first inserted, printed and published on Thursday, the 20th day of February 1936 and was printed and published in regular issues of said newspaper on each and every Thursday thereafter until and including Thursday the 5th day of March 1936.

That during all the times herein mentioned said newspaper was and still is qualified as a medium of official and legal publications, as required by the laws of the State of Minnesota; that said newspaper has complied and that at all times herein mentioned has complied with all the requirements that constitute a legal newspaper, as defined and set forth in Sections 3 and 4 of Chapter 484, Session [fol. 39] Laws of Minnesota for 1921, and in Sections 10935 and 10936, Mason's Minnesota Statutes of 1927, and in Chapter 373 of Session Laws of Minnesota for 1933, and in any and all acts amendatory of said laws or any of them.

That for more than one year immediately preceding the date of the first publication of said legal advertisement, and ever since said time, said newspaper has been continuously and still is:

1. Printed in the English language from its known office of publication in said Village of Grand Marais, from which it purports to be issued, and in column and sheet form equivalent in space to at least four pages with five columns to the page, each seventeen and three-fourths inches long.

2. Issued once a week from a known office established in such place for publication and equipped with skilled work-

men and the necessary material for preparing and printing the same, in which all the presswork is done.

3. [Complied], printed, published and issued so that in its makeup twenty-five percent of its news columns at all times have been and still are devoted to local news of interest to the community which it purports to serve; so that it has also contained and does contain general news, comment and miscellany; and so that it has never wholly duplicated any other publication, and has never been entirely made up of patents, plate matter and advertisements, or any of them.

4. Circulated in and near, its place of publication, to the extent of at least 240 copies regularly delivered to paying subscribers, and duly entered as second class matter at its local post office at Grand Marais, Minnesota.

That long prior to the date of the first publication of said legal advertisement, there was filed with the County Auditor of said County of Cook, State of Minnesota, an affidavit of a person having knowledge of the facts, showing the name and location of said newspaper and the existence of the conditions constituting its qualifications as a legal newspaper, as required and set forth in the laws of the State of Minnesota hereinbefore cited.

That the following is a printed copy of the lower case alphabet from A to Z, both inclusive, which is hereby acknowledged as being the size and kind of type used in the composition and publication of said legal advertisement, viz.:

abcdefghijklmnopqrstuvwxyz—6 pt.

Further affiant saith not, save that this affidavit is made as proof of the publication of said legal advertisement and [fol. 40] as evidence of all the facts therein set forth, as provided by the laws of the State of Minnesota, and particularly as provided in Sections 9237, 9859, 9860 and 10936, Mason's Minnesota Statutes of 1927, and Acts amendatory thereof and supplementary thereto.

Leroy Raff.

Subscribed and sworn to before me this 8th day of April 1936. E. F. Lindquist, Clerk of District Court, Cook County, Minn. (Seal of Dist. Ct., Cook Co., Minn.)

Clerk's certificate to foregoing paper omitted in printing.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA,
FIFTH DIVISION

No. 1789. Law

STATE OF MINNESOTA, by its Attorney General, Petitioner,

vs.

PAUL QUODONCE et al., Respondents

Bill of Exceptions—Filed April 17, 1937

The above entitled matter came on for hearing at a regular term of the above named court in the Federal Building in the city of Duluth, state and district of Minnesota, on the 16th day of September, 1936, before the Honorable [fol. 41] Robert C. Bell, Judge, presiding; Mr. Ordner T. Bundlie, Assistant Attorney General of the State of Minnesota and Mr. Bert McMullen, special counsel, appearing for and on behalf of the State of Minnesota; Mr. George F. Sullivan, United States Attorney and Mr. Lewis N. Evans, Assistant United States Attorney, appearing specially for and on behalf of the United States of America; and Mr. L. M. Hatlestad appearing for and on behalf of the Quetico-Superior Council.

Whereupon, the following proceedings were had, to-wit:

The State of Minnesota presented its petition in condemnation in the above entitled cause. Thereupon the court's attention was called to the fact that notice of lis pendens was recorded on February 8, 1936, at Grand Marais, at 9 o'clock in the morning, recorded in Book 7 of Miscellaneous page 129. Thereupon the State of Minnesota offered and there was received in evidence, Petitioner's Exhibit 1, to-wit:

PETITIONER'S EXHIBIT 1

"Order No. 8754

"It is hereby ordered that the description of the center line of Constitutional Trunk Highway No. 1, now Trunk Highway No. 61, in Cook County, Minnesota, be made more specific and definite between the points hereinafter named and said center line is hereby located as follows:

"From a point on or near the west line of Government Lot 1, section 12, township 62 north, range 4 east, distant 795

feet south of the northwest-corner thereof run northeasterly at an angle of $56^{\circ}30'$ with said west lot line for a distance of 1029.8 feet to a point in said Government Lot 1, which point is known as Engineer's Station 1663 plus 40.8 and is equal to Engineer's Station 1663 plus 40.8 on the center line of said Trunk Highway as described in Commissioner of Highways' Order No. 7994 on S. P. 1-47-2 and is the point of beginning of center line herein described; thence deflect to the right on a $0^{\circ}30'$ curve (delta angle $6^{\circ}47'$) for a distance of 1356.7 feet; thence on tangent to said curve for a distance of 5246.7 feet; thence deflect to the right on a $0^{\circ}30'$ curve (delta angle $6^{\circ}48'$) for a distance of 1360 feet; thence on tangent to said curve for a distance of 25.7 feet to a point on or near the west line of section 5, township 62 north, range 5 east, distant 150.9 feet north of the west quarter corner thereof; thence continue northeasterly along last above described course for a distance of 1461.9 feet; thence [fol. 42] deflect to the right on a $1^{\circ}46'$ curve (delta angle $15^{\circ}34'$) for a distance of 881.1 feet; thence on tangent to said curve for a distance of 386.3 feet to a point on or near the north and south quarter line of said section 5, distant 1930 feet south of the north quarter corner thereof; thence continue northeasterly along last above described course at an angle of $89^{\circ}30'$ with said quarter line for a distance of 937.3 feet; thence deflect to the left on a $2^{\circ}00'$ curve (delta angle $37^{\circ}20'$) for a distance of 1866.7 feet; thence on tangent to said curve for a distance of 860.5 feet; thence deflect to the right on a $1^{\circ}00'$ curve (delta angle $24^{\circ}56'$) for a distance of 2493.3 feet; thence on tangent to said curve and run northeasterly along a line which would intersect a point on or near the west line of section 34, township 63 north, range 5 east, distant 111 feet north of the meander corner on the north shore of Lake Superior for a distance of 2324.2 feet; thence deflect to the left on a $0^{\circ}42'$ curve (delta angle $6^{\circ}00'$) for a distance of 857.1 feet; thence on tangent to said curve for a distance of 928.2 feet; thence deflect to the left on a $2^{\circ}30'$ curve (delta angle $33^{\circ}48'$) for a distance of 1352 feet; thence on tangent to said curve for a distance of 507.1 feet; thence deflect to the right on a $2^{\circ}12'$ curve (delta angle $18^{\circ}44'$) for a distance of 851.5 feet; thence on tangent to said curve for a distance of 697 feet; thence deflect to the left on a $1^{\circ}30'$ curve (delta angle $15^{\circ}30'$) for a distance of 1033.3 feet; thence on tangent to said curve

for a distance of 453.8 feet to a point on or near the west line of section 35, township 63 north, range 5 east, distant 1128 feet south of the northwest corner thereof; thence continue northeasterly along last above described course for a distance of 93.5 feet; thence deflect to the right on a $1^{\circ}45'$ curve (delta angle $59^{\circ}21'$) for a distance of 2248.6 feet; thence on tangent to said curve for a distance of 1551.8 feet; thence deflect to the left on a $1^{\circ}30'$ curve (delta angle $33^{\circ}42'$) for a distance of 2246.7 feet; thence on tangent to said curve for a distance of 1867.3 feet to a point on or near the east and west quarter line of section 25, township 63 north, range 5 east, distant 603 feet west of the meander corner on the north shore of Lake Superior; thence continue northeasterly along last above described course for a distance of 5175.3 feet to a point on or near the west line of section 19, township 63 north, range 6 east, distant 864.3 feet north of the southwest corner thereof; thence continue northeasterly along last above described course at an angle of $44^{\circ}24'$ with said west section line for a distance of 2531.6 feet to a point on or near the east and west quarter line of said section 19 distant 1771.7 feet east of the west quarter corner thereof; thence continue northeasterly along last [fol. 43] above described course at an angle of $44^{\circ}01'$ with said east and west quarter line for a distance of 82.9 feet; thence deflect to the right on a $1^{\circ}00'$ curve (delta angle $10^{\circ}00'$) for a distance of 1000 feet; thence on tangent to said curve and run northeasterly along a line which would intersect a point on or near the east line of said section 19 distant 225.3 feet south of the northeast corner thereof for a distance of 2498.7 feet; thence deflect to the left on a $1^{\circ}00'$ curve (delta angle $14^{\circ}00'$) for a distance of 1400 feet; thence on tangent to said curve for a distance of 3127.1 feet to a point on or near the north and south quarter line of section 17, township 63 north, range 6 east, distant 1284.5 feet south of the northwest corner of Government Lot 2, said section 17; thence continue northeasterly along last above described course at an angle of $41^{\circ}57'$ with said west lot line for a distance of 2042.2 feet to a point in the north half of the northeast quarter of said section 17, which point is known as Engineer's Station 2183 plus 80.8.

Portion of S. P. 61-1-47-2 & 3, Cook County.

Dated February 15, 1934.

N. W. Elsberg, Commissioner of Highways.

STATE OF MINNESOTA,
County of Ramsey:

I, N. W. Elsberg, Commissioner of Highways of the State of Minnesota, do hereby certify that I have compared the above and foregoing copy of order No. 8754 with the original thereof on file in my office and in my custody, and the foregoing is a true and correct copy thereof and transcript therefrom.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal at the City of St. Paul, Minnesota, this — day of — 193—.

(Signed) N. W. Elsberg, Commissioner of Highways."

The State of Minnesota then offered and there was received in evidence, Petitioner's Exhibit 2, to-wit:

PETITIONER'S EXHIBIT 2

"Order No. 8755

"It is hereby ordered that the right of way upon Constitutional Trunk Highway No. 1, now Trunk Highway No. 61, in Cook County, Minnesota, as designated by Commissioner of [fol. 44] Highways' Order No. 8754, shall be 400 feet in width (being 200 feet wide on each side of the center line thereof) all as shown on right of way map thereof on file in the office of the Minnesota Highway Department, and beginning at Engineer's Station 1668 plus 77.6 and running thence in a general northeasterly direction.

Portion of S. P. 61-1-47-2 & 3, Cook County.

Dated February 15, 1934.

N. W. Elsberg, Commissioner of Highways.

STATE OF MINNESOTA,
County of Ramsey:

I, N. W. Elsberg, Commissioner of Highways of the State of Minnesota, do hereby certify that I have compared the above and foregoing copy of order No. 8755 with the original thereof on file in my office and in my custody, and the

foregoing is a true and correct copy thereof and transcript therefrom.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal at the City of St. Paul, Minnesota, this — day of — 193.

(Signed) N. W. Elsberg, Commissioner of Highways.

The State of Minnesota then offered and there was received in evidence, Petitioner's Exhibit 3, to-wit:

PETITIONER'S EXHIBIT 3

"Order No. 9567

"It is hereby ordered that the right of way upon Constitutional Trunk Highway No. 1, now known as Trunk Highway No. 61, in Cook County, Minnesota, the center line of which has been definitely located and designated by Commissioner of Highways' Order No. 8754 and the width therefor by Order No. 8755; that the said Width Order No. 8755 shall be and is hereby supplemented, changed and modified to provide a right of way 500 feet in width, being 250 feet wide on each side of the center line of said Trunk Highway, between Engineer's Station 1663 plus 40.8 and Engineer's Station 1710 plus 20; Engineer's Station 1727 plus 90 and Engineer's Station 1747 plus 40; Engineer's Station 1799 plus 95 and Engineer's Station 1832 plus 00; Engineer's Station [fol. 45] 1845 plus 50 and Engineer's Station 1905 plus 30; Engineer's Station 1922 plus 55 and Engineer's Station 1970 plus 40; Engineer's Station 1982 plus 85 and Engineer's Station 2047 plus 10; and Engineer's Station 2090 plus 45 and Engineer's Station 2178 plus 35, except between the following named points along said center line, all as shown on the right of way map thereof on file in the office of the Minnesota Highway Department; the width of said right of way shall be as hereinafter set forth:

| | | |
|---------------|---|--------------|
| Width on | : | Width on |
| right side of | : | left side of |
| center line | : | center line |

Sta. 1699 plus 00 to Sta. 1710 plus 20
250 feet
to the south line of Gov't.
Lot 5, Sec. 6, Twp. 62N.
Rge. 5 E. and 200 feet in
said Gov't. Lot 5, Sec. 6.

Running thru—

250 feet Gov't. Lots 5 and 6, Sec. 6, Twp.
to the 62N. Rge. 5E.
south
line of
Gov't. Lot 5, Sec. 6, Twp. 62N. Rge. 5E
and 200 feet in said Gov't. Lot 5, Sec. 6.

Width on : Width on
right side of : left side of
center line : center line

Running thru—

Sta. 1727 plus 90 to Sta. 1747 plus 40
200 feet
to the west line of Gov't.
Lot 8, Sec. 6, Twp. 62N.
Rge. 5E., 250 feet thru said
Gov't. Lot 8, Sec. 6, and
200 feet in Gov't. Lot 5,
Sec. 5, Twp. 62N. Rge. 5E.

200 feet Gov't. Lot 8, Sec. 6, Twp. 62N.
to the Rge. 5E.
west NW $\frac{1}{4}$ of SE $\frac{1}{4}$, Sec. 6, Twp. 62N.
line of Rge. 5E.
Gov't. SE $\frac{1}{4}$ of NE $\frac{1}{4}$, Sec. 6, Twp. 62N.
Lot 8, Rge. 5E.
Sec. 6, SW $\frac{1}{4}$ of NW $\frac{1}{4}$, Sec. 5, Twp. 62N.
Twp. Rge. 5E.
62N., Gov't. Lot 5, Sec. 5, Twp. 62N.
Rge. Rge. 5E.
5E.,
and 250 feet thru Gov't. Lot 8 and the
SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Sec. 6 and 200 feet in
the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 5, Twp. 62N.
Rge. 5E.

Sta. 1799 plus 95 to Sta. 1832 plus 00
200 feet
to the west line of Sec. 4,
Twp. 62N. Rge. 5E., 250
feet to the north and south
quarter lines of Sec. 4,
Twp. 62N. Rge. 5E. and
Sec. 33, Twp. 63N. Rge.
5E. and 200 feet in Gov't.
lot 3, said Sec. 33.

200 feet NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Sec. 5, Twp. 62N.
to the Rge. 5E.
west Gov't. Lot 8, Sec. 5, Twp. 62N.
line of Rge. 5E.
Sec. 4, Gov't. Lots 2 and 3, Sec. 4, Twp.
Twp. 62N. Rge. 5E.
62N., Gov't. Lots 2 and 3, Sec. 33,
Rge. 5E Twp. 63N. Rge. 5E
250 feet
to the
north line of said Sec. 4 and 200 feet in
Sec. 33, Twp. 63 N. Rge. 5E.

[fol. 46]

Sta. 1845 plus 50 to Sta. 1905 plus 30
200 feet
to the west line of Gov't.
Lot 4, Sec. 33, Twp. 63N.
Rge. 5E., 250 feet thru said
Gov't. Lot 4, Sec. 33 and
thru Gov't. Lots 2, 3, 4
and 5, Sec. 34, Twp. 63N.
Rge. 5E. and 200 feet in the
SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said
Sec. 34.

200 feet Gov't. Lots 3 and 4, Sec. 33,
to the Twp. 63N. Rge. 5E.
west Gov't. Lots 2, 3, 4 and 5, Sec. 34,
Line of Twp. 63N. Rge. 5E.
Gov't. SW $\frac{1}{4}$ of NE $\frac{1}{4}$, Sec. 34, Twp.
Lot 4, 63N. Rge. 5E.
Sec. 33,
Twp. 63N. Rge. 5E.; 250 feet thru said
Gov't. lot 4, Sec. 33 and thru Gov't. Lots
2, 3, 4 and 5, Sec. 34, Twp. 63N. Rge. 5E.
and 200 feet in the SW $\frac{1}{4}$ of NE $\frac{1}{4}$, of said
Sec. 34.

Sta. 1922 plus 55 to Sta. 1970 plus 40
200 feet
to the west line of Sec. 35,
Twp. 63N. Rge. 5E., 250
feet thru Gov't. lots 2 and
3 and NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of
said Sec. 35 and thru the
SE $\frac{1}{4}$ of SW $\frac{1}{4}$ and SW $\frac{1}{4}$ of
SE $\frac{1}{4}$, Sec. 26, Twp. 63N.
Rge. 5E. and 200 feet in
Gov't. Lot 1, said Sec. 26.

200 feet NE $\frac{1}{4}$ of NE $\frac{1}{4}$, Sec. 34, Twp.
to the 63N. Rge. 5E.
west Gov't. Lot 1, Sec. 34, Twp. 63N.
line of Rge. 5 E.
Sec. 35, NW $\frac{1}{4}$ of NW $\frac{1}{4}$, Sec. 35, Twp.
Twp. 63N. Rge. 5 E.
63 N. Gov't. Lots 2 and 3, Sec. 35,
Rge. Twp. 63N. Rge. 5E.
5E., S $\frac{1}{2}$ of SW $\frac{1}{4}$, Sec. 26, Twp. 63N.
250 feet Rge. 5E.
thru SW $\frac{1}{4}$ of SE $\frac{1}{4}$, Sec. 26, Twp.
said 63 N. Rge. 5E.
Sec. 35 Gov't. Lot 1, Sec. 26, Twp. 63N.
and Rge. 5E.
thru the S $\frac{1}{2}$ of SW $\frac{1}{4}$ and SW $\frac{1}{4}$ of SE $\frac{1}{4}$,
Sec. 26, Twp. 63N. Rge. 5E. and 200 feet
in Gov't. Lot 1, said Sec. 26.

Width on : Width on
right side of : left side of
center line : center line

Running thru—

Sta. 1983 plus 85 to Sta. 2033 plus 00
200 feet
to the west line of Gov't.
Lot 6, Sec. 25, Twp. 63N.
Rge. 5E. and 250 feet in
Gov't. Lots 2, 3, 4, 5 and
6, of said Sec. 25.

200 feet NE $\frac{1}{4}$ of SE $\frac{1}{4}$, Sec. 26, Twp.
to the 63N. Rge. 5E.
west Gov't. Lot 1, Sec. 26, Twp. 63N.
line of Rge. 5E.
Gov't. SW $\frac{1}{4}$ of NW $\frac{1}{4}$, Sec. 25, Twp.
Lot 5, 63N. Rge. 5E.
Sec. 26, Gov't. Lots 2 to 6 inclusive,
Twp. Sec. 25, Twp. 63N. Rge. 5E.
63N.,
Rge. 5E. and 250 feet in the SW $\frac{1}{4}$ of
NW $\frac{1}{4}$ and Gov't. Lots 2, 3, 4, 5 and 6,
in said Sec. 25.

(fol. 47)

Sta. 2033 plus 00 to Sta. 2047 plus 10
200 feet
to the south line of Sec. 24,
Twp. 63N. Rge. 5E. and
200 feet in the SE $\frac{1}{4}$ of
SE $\frac{1}{4}$, of said Sec. 24.
Excepting therefrom that
portion of Gov't. Lot 1,
Sec. 25, Twp. 63N., Rge.
5E. lying southerly of a
line run east from a point
on the west line of Gov't.
Lot 1, said Sec. 25 distant
521.7 feet north of the
southwest corner thereof.

400 feet Gov't. Lots 1 and 2, Sec. 25,
to the Twp. 63N. Rge. 5E.
south SE $\frac{1}{4}$ of SE $\frac{1}{4}$, Sec. 24, Twp. 63N.
line of Rge. 5E.
Sec. 24,
Twp. 63N. Rge. 5E. and 200 feet in the
SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of said Sec. 24.

Sta. 2090 plus 45 to Sta. 2109 plus 70
200 feet
to the west line of Gov't.
Lot 2, Sec. 19, Twp. 63N.
Rge. 6E. and all that por-
tion of Gov't. Lots 1 and 2
and NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of said
Sec. 19 lying southeasterly
of the center line of said
Trunk Highway.

200 feet Gov't. Lots 1, 2 and 3, Sec. 19,
to the Twp. 63N. Rge. 6E.
west NW $\frac{1}{4}$ of NE $\frac{1}{4}$, Sec. 19, Twp.
line of 63N. Rge. 6E.
Gov't.
Lot 2, Sec. 19, Twp. 63N. Rge. 6E. and 250
feet in Gov't. Lots 1 and 2 and the NW $\frac{1}{4}$
of NE $\frac{1}{4}$ of said Sec. 19.

Sta. 2124 plus 05 to Sta. 2126 plus 60
250 feet

All that Gov't. Lot 1, Sec. 19, Twp. 63N.
portion Rge. 6E.
of Gov't. Lot 1, Sec. 20, Twp. 63N.
Gov't. Rge. 6E.
Lot 1 Gov't. Lot 4, Sec. 17, Twp.
Sec. 19, 63N. Rge. 6E.
Gov't.
Lot 1,
Sec. 20 and Gov't. Lot 4, Sec. 17, all in
Twp. 63N. Rge. 6E. lying northwesterly
of the center line of said Trunk Highway.

Portion of S. P. 61-1-47-3,
Cook County,
Dated April 2, 1935.

N. W. ELSBERG,
Commissioner of Highways.

[fol. 48] STATE OF MINNESOTA,
County of Ramsey.

I, N. W. Elsberg, Commissioner of Highways of the State of Minnesota, do hereby certify that I have compared the above and foregoing copy of order No. 9567 with the original thereof on file in my office and in my custody, and the foregoing is a true and correct copy thereof and transcript therefrom.

In Witness Whereof, I have hereunto subscribed my name and affixed my official seal at the City of St. Paul, Minnesota, this — day of — 193—.

(Signed) N. W. Elsberg.

MEMORANDUM AS TO PETITIONER'S EXHIBIT 4

Thereupon the State of Minnesota offered and there was received in evidence, Petitioner's Exhibit 4, which is described as follows: A large blueprint map prepared by the State of Minnesota, Department of Highways, designated as Right-of-Way Map, Cook County, Reservation River to one and one-half miles west of Grand Portage, showing thereon parts of Sections 4, 5 and 6 in Township 62 North, Range 5 East of the 4th Principal Meridian; Sections 25, 26, 33, 34 and 35 in Township 63 North, Range 5 East, and Sections 17, 18, 19 and 20 in Township 63 North, Range 6 East of the 4th Principal Meridian; and also showing thereon the location of the proposed Trunk Highway No. 61 as described in Petitioner's Exhibits 1, 2 and 3.

MOTION FOR APPOINTMENT OF APPRAISERS, ETC.

The State of Minnesota rested and moved for the allowance of the petition and for the appointment of three appraisers, residents of Cook County, for the purpose of appraising the land and making a report to the Court of their awards in the manner prescribed by law, and that the Court set a time and place for the qualification of the commissioners.

MOTION TO DISMISS

The United States appeared specially in this matter for the sole purpose of making certain motions, and by its attorney stated it did not intend to subject itself to the general jurisdiction of the Court in this matter, and upon such special appearance moved that this action be dismissed on

the ground that the Court has no jurisdiction of the subject matter of the action, or the parties thereto, for the following reasons:

First: That this is a suit against the United States and the United States has not given its consent thereto.

Secondly: That the District Court of the State of Minnesota, in the first instance, had no jurisdiction of this action [fol. 49] or over the United States, and the removal to this Court will vest no jurisdiction in this Court.

Thirdly. That the United States has not been served with process in the manner prescribed by law.

Furthermore, the United States, appearing specially as aforesaid, moved that this action be dismissed with particular reference to the tract referred to in the petition of the State as Parcel 5, being a part of Lot 5 and a part of the Southwest Quarter of the Northwest Quarter, in Section 5, Township 62 North of Range 5, East of the 4th Principal Meridian, and more particularly described in petition of the State for the same reasons before stated. In support of this second motion, the United States offered and there was received in evidence, Government's Exhibit 1, to-wit:

GOVERNMENT'S EXHIBIT 1

"United States Department of the Interior,
Office of Indian Affairs,
Washington

May 7, 1936.

"I, E. J. Armstrong, Assistant Finance Officer, do hereby certify that the papers hereto attached are true copies of the originals as the same appear of record in this Office.

In Testimony Whereof, I have hereunto subscribed my name, and cause the seal of this office to be affixed on the day and year first above written.

(Signed) E. J. Armstrong, Assistant Finance Officer."

"1-006

Oath of Disinterestedness

(Section 3745, U. S. Revised Statutes.)

"I do solemnly swear that the copy of contract hereunto annexed is an exact copy of contract made by me personally with Paul Quodance that I made the same fairly, without benefit or advantage to myself, or allowing any such benefit or advantage corruptly to the said Paul Quodance, or any other person; and that the papers accompanying include [L. 50] all those relating to the said contract, as required by the statute in such case made and provided.

(Signed) T. A. Walters, First Assistant Secretary,
Bureau of Land Management, Department of the Interior. DLK.

"Sworn to and subscribed before me, at Washington, D. C., this twenty-first day of February, 1936.
(Signed) W. H. Reichart, Notary Public. My commission expires August 10, 1939."

—
"United States Department of the Interior
Office of Indian Affairs

OFFER TO SELL LANDS TO THE UNITED STATES

Date Jan. 22, 1936.

Allotment 38.

"To assist in the program of the United States to acquire lands under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), for Indian purposes, the undersigned owners of the following-described lands hereby offer to sell and convey to the United States of America the said lands in fee simple with all buildings and improvements thereon:

SW-NW, Lot 5, Section 5, Town 62, Range 5
Cook County, Minnesota

Allot.—38.

Tract.—302.

Option.—302.

In consideration of the examination and appraisal by the United States Government of the lands herein described

and other good and valuable considerations which are hereby acknowledged as received, the undersigned grant to the United States of America the option and right to purchase said lands, including improvements, at the rate of \$11.40 per acre estimated to contain 76.30 acres (or the sum of \$870.00 for the tract as a whole, including all improvements and appurtenant rights, including water); however, the exact acreage is to be determined by survey either upon the ground or from existing data.

The undersigned agree that the procedure and terms shall be as required by the Secretary of the Interior, and that the [fol. 51] conveyance is to be by warranty deed in the form, manner, and at the time desired by the said Secretary. All outstanding taxes, liens, and encumbrances, if any, are to be paid by the undersigned, including expenses incidental to the execution of the deed.

This offer is for acceptance by the United States through the Secretary of the Interior within six months from the date hereof.

After the acceptance of this option, the United States will purchase immediately a certificate or an abstract of title covering the said property; the vendor will obtain and record, without cost to the United States, such additional evidence of title as may be requested by the Secretary of the Interior, including the deed made pursuant hereto; and thereafter the United States will have the certificate or abstract extended to show indefeasible title vested in the United States, the cost of securing and having extended the certificate or abstract to be deducted from the purchase price payable to the vendor: Provided, That, if such certificate or abstract is not secured by the United States, the Secretary may, by written notice to the vendor at any time after acceptance of this offer, require the vendor to furnish, without cost to the United States, a complete abstract or an acceptable certificate of title covering the said property, to obtain and record additional evidence of title, and later to extend said abstract or certificate to embrace the additional data including the deed made pursuant hereto: Provided further, That if the vendor fails or refuses to furnish such an abstract or certificate within sixty days after the aforesaid notice, such abstract or certificate may be procured by the United States at the expense of the vendor and the cost thereof deducted from the purchase price of said property.

Should the operations of this option extend beyond the current fiscal year, it is understood that such option will then be contingent upon necessary appropriation by Congress of funds for expenditure hereunder after such current year has expired. In case such appropriation as may be necessary to carry out this option is not made, the vendor hereby releases the United States from all liability due to the failure of Congress to make such appropriation.

No member of or delegate to Congress shall be admitted to any share or part in this offer or option, nor to any benefit to arise thereupon.

(Signed) Mr. Paul Quodonce, Single.

Witnesses: Mrs. Julia O. Shughart, Mrs. Mary Ann Thibault.

[fol. 52] Department of the Interior,
Office of the Secretary,
Washington, D. C.

This option is hereby accepted this 20th day of Feb., 1936 subject to the conditions named therein.

(Signed) T. A. Walters, First Assistant Secretary.

Original.

Form SL No. 10
U. S. Department of Agriculture
Agricultural Adjustment Administration
Program Planning Division
Land Policy Section.

Submarginal Land Program
Agricultural Demonstration Projects

Allotment No. 38 APPRAISAL REPORT
Tract no. 38 Project Grand Portage County Cook State Minn.
Field work by Pearson and Mayhew Title..... Date.....
Owner Paul Quodonce Address.....
Acres claimed by owner 76.30 Acres (from ownership map) 76.30
Location SW-NW, Lot 5, Section 5, 62-5

I. Valuation of Land and Young Tree Growth

| Class of Grade of Land | Appraised price Each grade | Acres—each grade | Total Appraised Price | Remarks (Exceptional factors determining appraised price.) |
|--|----------------------------|------------------|-----------------------|--|
| | Dollars | | Dollars | |
| Crop land (including orchard and hay meadows)..... | x x x x x x | x x x x x | ..... | x x x x x x |
| Grade..... | ..... | ..... | ..... | ..... |
| Grazing or open pasture..... | x x x x x x | x x x x x | ..... | x x x x x x |
| Grade..... | ..... | ..... | ..... | ..... |
| Forest land (including wood-land pasture)..... | x x x x x x | x x x x x | ..... | x x x x x x |
| Grade..... | 2.50 | 76.30 | 196.75 | ..... |
| Waste..... | ..... | ..... | ..... | ..... |
| Total..... | x x x x x x | x x x x x | 196.75 | ..... |

II. Valuation of Merchantable Timber

| Product | Acres | Stand per Acre | Total Stand | Value Per Unit | Total Value |
|------------|-------|----------------------|----------------|----------------------|----------------|
| Total..... | | | | | |

[fol. 53]

Form SL No. 10

Page 2.

III. Summary of Values for Tract

| Items | Value per acre Dollars | Total Value Dollars |
|---|------------------------------|---------------------------|
| 1. Land and young tree growth (crop, grazing, forest land)..... | | 190.75 |
| 2. Timber (merchantable)..... | x x x | |
| 3. Improvements (Form S. L. No. 11)..... | x x x | |
| 4. Total value of tract..... | | 190.75 |
| 5. Deduction for inaccessibility (if any, explain below):..... | | |
| 6. Deduction for reservations and exceptions (explain below)..... | | |
| 7. Additions for accessibility, for potential values, etc. (explain below)..... | | |
| Lake frontage..... | 2000 plus | 1,000.00 |
| 8. Appraised fair purchase price (4 less 5 and 6 plus 7)..... | 15.60 | 1,190.75 |

Price of tract given in proposal to sell: Per acre, \$11.40 Total, \$870.00.
 Remarks and Explanations:.....

(Signed)..... Date.....

Chief Appraiser.
 (Signed) CARL P. PEARSON Date 1-20-36
 Project Manager.

Accepted..... Date.....
 Regional Director.

Instructions

1. Land classes:

(a) Crop land (including orchard and hay meadow): Embraces land in tillage, orchards, permanent hay meadows (whether tillable or nontillable) and "Rotation" pasture.

(b) Grazing or open pasture; Embraces all nontimber land pastured (except crop land pastured in rotation) or suitable for pasture whether tillable or nontillable.

(c) Forest land (including woodland pasture): Embraces all land covered by timber growth whether pastured or unpastured.

(d) Waste land: Embraces all land not suitable for crops, pastures, or the production of commercial timber.

[fol. 54] 2. Land grades within the classes:

"Grades" within each class are to be determined and defined by the project staff in collaboration with such expert technical assistance as may be available (soils technicians, foresters, agronomists, etc.) "Grades" are to be defined so that they will best represent the conditions of the land found in the particular area where they are to be used. A single grade within a class designation may embrace topographic, productive, erosion, and soil cover factors. For example: Roman numerals may be used to designate topography as I for level upland, II for moderately steep hillside or steeply rolling, III for foot slopes, IV for level bottom lands or excessively rough land; letters may designate the class as C for crop land, P for pasture or grazing, F for forest, etc.; Arabic numerals may designate productivity as determined by soil type, erosion, tilth, nature of grass or forest cover, etc.

3. Base prices:

A base price per acre for each grade of land as defined will be determined by the project staff in collaboration with such experienced assistance as is available (better farmers, county agents, farm real-estate dealers, appraisers, etc.)

4. Appraised price:

The appraiser in assigning a value to a particular plot of land may vary his appraisal of its value from the base price for the grade within which the plot falls in proportion as he feels the character of the plot varies from the generalized description given the grade. He must give reasons in the appropriate column for such variation from the base price. For example: A plot (graded IC2, level upland, cropped, slightly eroded, and of less productive soil) may have been carefully farmed, fertilized and measures taken to stop the erosion; such a plot might be valued above the base price for the grade.

Form SL No. 12-B (Revised March 6, 1935).

U. S. Department of Agriculture.
 Agricultural Adjustment Administration.
 Program Planning Division.
 Land Policy Section.

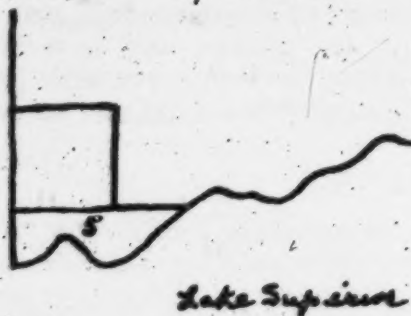
Tract 302.

Submarginal Land Program
 Agricultural Demonstration Projects
 Tract Map (With Grid)

[fol. 55]

Name of owner . Paul Quodance Allot—38
 Name of project Proposal No.
 Acres in tract 76.30 Field work by Date
 Description SW-NW Lot 5, 5-62-5

(Scale: 4 inches equals 1 mile)



Classes

Grades*

L Crop Land
 E
 G Pasture Land
 E
 N
 D Forest Land

(Do Not Write In This Space)

5-183a

Department of The Interior
Office of Indian Affairs

DEED NONCOMPETENT INDIAN LANDS

This Indenture, Made and entered into this 2nd day of March one thousand nine hundred and Thirty Six, by and [fol. 56] between Paul Quodance (a single man) of 326 East First Street, Duluth, Minnesota, noncompetent Chippewa Indian, part . . . of the first part, and The United States of America in Trust for The Grand Portage Bank of Chippewa Indians of — — party of the second part:

Witnesseth, That said party of the first part, for and in consideration of the sum of Eight Hundred and Seventy and no One-Hundredths (\$870.00) dollars, in hand paid, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto said party of the second part the following-described real estate and premises situated in Cook County, State of Minnesota to-wit: Government Lot No. Five (5), and The Southwest Quarter of The Northwest Quarter, (SW $\frac{1}{4}$ NW $\frac{1}{4}$), Section 5, town 62, Range 5, Containing Seventy-Six and Thirty Hundredths (76.30) Acres According to Government Survey Thereof, together with all the improvements thereon and the appurtenances thereunto belonging. And the said party of the first part, for himself and his heirs, executors, and administrators, does hereby covenant, promise, and agree to and with the said party of the second part, its successors and assigns, that he will forever warrant and defend the said premises against the claim of all persons, claiming or to claim by, through or under himself only.

To have and to hold said described premises unto the said party of the second part, its successors and assigns, forever.

In Witness Whereof, The said party of the first part has hereunto set his hand and seal . . . the day and year first above written.

Paul Quodance . . . (Seal.)

(Seal.)

(Seal.)

(Seal.)

(Seal.)

Witnesses: E. H. Whittaker. Wm. Shughart.

(Cover)

Noncompetent Indian Deed

from

Paul Quodance

to

United States of America in Trust for The Grand Portage
Bank of Chippewa Indians

[fol. 57] — of —,
— County, ss:

This instrument was filed for record on the — day of
—, 19, at — o'clock N., and duly recorded in Book —,
on page —.

—, Register of Deeds.

5-183a

Department of The Interior

Office of Indian Affairs

March 12 1936

The within deed is respectfully submitted to the Secretary of the Interior, with the recommendation that it be approved.

William Zimmerman, Jr., Assistant Commissioner.

Department Of The Interior

March 14 1936

The within deed is hereby approved.

T. A. Walters, First Assistant Secretary.

Office Of Indian Affairs

Land Division

March 23, 1936

Recorded in Deed Book —, Indian Lands, Vol. 1, page 1.

Acknowledgments must be in accordance with the forms prescribed by the State in which the land is situated.

STATE OF MINN.,

County of St. Louis, ss:

Be It Remembered, That on this 2 day of March, A. D. 1936 before the undersigned, a Notary Public, in and for the County and State aforesaid, personally appeared Paul [fel. 58] Quodance to me personally known to be the identical person who executed the within instrument of writing, and such person duly acknowledged the execution of the same.

In Testimony Whereof, I have hereunto subscribed my name and affixed my notarial seal on the day and year last above written.

(Signed) M. B. Butler, Notary Public.

My commission expires Jan. 3, 1943.

Thereupon the United States rested and no further proceedings were had save and except that the Quetico-Superior Council was granted leave to appear and file a brief as Amicus Curiae. The matter was then taken under advisement by the Court, with the understanding that to the order subsequently to be entered, the party affected thereby adversely would have an exception allowed to all or any part of such order.

Thereupon on the 23rd day of December, 1936, the above entitled court made, declared, entered and filed its order as follows:

ORDER DENYING MOTION OF UNITED STATES TO DISMISS, ETC.

"The above-entitled cause came duly on for hearing before the Court and the Honorable Robert C. Bell, one of

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the judges thereof, in the Federal Building at Duluth, St. Louis County, Minnesota, on September 16, 1936, at 10:00 o'clock A. M., at which time the petition herein was duly presented to the Court after this proceeding had been duly removed from the District Court, Eleventh Judicial District, Cook County, Minnesota.

"The petitioner appeared by Ordner T. Bundlie, Deputy Attorney General and Bert McMullen, Special Counsel of the State of Minnesota. George F. Sullivan, United States Attorney for the District of Minnesota, and his assistant, Lewis N. Evans, appeared generally for the Indian respondents, and made special appearance for the United States Government for the express purpose of objecting to the jurisdiction of the Court; and L. M. Hatlestad appeared for and on behalf of the Quetico-Superior Committee, not a respondent herein.

"At the opening of the said hearing Mr. Lewis N. Evans, Assistant United States Attorney for the District of Minnesota, appearing specially in this matter for the United States Government for the sole purpose of making certain [fol 59] motions and advising the Court that the United States Government did not intend to subject itself to the general jurisdiction of the Court in this matter, moved the Court to dismiss said suit upon the following grounds:

"That said suit was a suit against the United States and that the United States had not given its consent thereto; that the Court of the State of Minnesota in the first instance had no jurisdiction in said action over the United States, and that the removal of said suit from the State Court to this Court would vest no jurisdiction in this Court; and, further, that the United States had not been served with process in this matter in the manner and form prescribed by law; and moved that said action be dismissed with particular reference to the tract described in the petition of the State of Minnesota as Parcel No. 5;

"The Court took said motion under advisement and proceeded, at said time, to hear said suit, and upon a consideration of said motion of the United States, said motion is in all things denied and the United States is given an exception from said ruling of this Court.

JUDGMENT

"Thereupon the petition herein was duly presented to the Court and the petitioner proceeded to offer testimony thereon, and the Court having heard the evidence adduced by the parties and the arguments of counsel, and after due consideration of the written briefs submitted by the respective counsel, the Court finds as follows:

I

"That, except as hereinafter qualified, all of the facts stated in the petition are true as therein stated;

II

"That the consent of the United States to bring these proceedings against Indian allottees has been expressly granted and given by the United States to the State of Minnesota, pursuant to 25 United States Code Annotated, Section 357, and that the United States accordingly is not a necessary party respondent to these proceedings;

III

"That the lands sought to be taken in this proceeding are situated in Cook County, Minnesota, and are described as follows, and the names of all persons interested in each of the said parcels of land, together with the nature of their interests, are hereinafter set forth immediately following the description of each of said parcels.

[fol. 60]

Parcel 5 (61-1-47-3)-

All that part of the two following described tracts:

1. Government Lot 5 of section 5, township 62 north, range 5 east;

2. Southwest quarter of the northwest quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$) of section 5, township 62 north, range 5 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the west line of said section 5, distant 150.9 feet north of the west quarter corner thereof; thence run northeasterly at an angle of 72°08' with said

west section line for a distance of 1461.9 feet and there terminating;

containing 12.79 acres, more or less.

Names of persons interested in said Parcel 5 and nature of interest:

| Name | Nature of Interest |
|--------------------------|---|
| Paul Quodonce | Owner under Indian Allotment |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| United States of America | Holder of Fee in Trust |

Parcel 6 (61-1-47-3)

All that part of the following described tract:

Government Lot 6 of section 5, township 62 north, range 5 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the west line of said section 5, distant 150.9 feet north of the west quarter corner thereof; thence run northeasterly at an angle of $72^{\circ}08'$ with said west section line for a distance of 1461.9 feet; thence deflect to the right on a $1^{\circ}46'$ curve, delta angle $15^{\circ}34'$, for a distance of 881.1 feet; thence on tangent to said curve for a distance of 500 feet and there terminating;

containing 12.32 acres, more or less.

[fol. 61] Names of persons interested in said Parcel 6 and nature of interest:

| Name | Nature of Interest |
|--------------------------------------|------------------------------|
| Me Shaix | Owner under Indian Allotment |
| Unknown heirs of Me Shaix, deceased; | Claimants of an interest |
| Nancy McMillan Penay see) | |

| Name | Nature of Interest |
|--------------------------|---|
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| United States of America | Holder of Fee in Trust |

Parcel 7 (61-1-47-3)

All that part of the following described tract:

Government Lots 7 and 8 of section 5, township 62 north, range 5 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the west line of said Government Lot 7, distant 612 feet south of the northwest corner thereof; thence run northeasterly at an angle of $89^{\circ}30'$ with the west line thereof; for a distance of 937.3 feet; thence deflect to the left on a $2^{\circ}00'$ curve, delta angle $37^{\circ}20'$, for a distance of 1866.7 feet; thence on tangent to said curve for a distance of 200 feet and there terminating;

containing 24.38 acres, more or less.

Names of persons interested in said Parcel 7 and nature of interest:

| Name | Nature of Interest |
|--|---|
| Louise May-maush-kaw-aush) aush) | Owners under Indian Allotment |
| Edward Plante) | |
| Louise Plante) | |
| Theodore Plante) | |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| Unknown heirs of Louise May-maush-kaw-aush | Claimants of an interest |
| The United States of America | Holder of Fee in Trust |

[fol. 62]

Parcel 11 (61-1-47-3)-

All that part of the following described tract:

Government Lot 3 of section 33, township 63 north, range 5 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the east line of said Government Lot 3, distant 536 feet north of the southeast corner thereof; thence run southwesterly at an angle of $77^{\circ}20'$ with the east line thereof for a distance of 1065.2 feet; thence deflect to the left on a $1^{\circ}00'$ curve, delta angle $24^{\circ}56'$, for a distance of 500 feet and there terminating;

containing 12.57 acres, more or less.

Names of persons interested in said Parcel 11 and nature of interest:

| Name | Nature of Interest |
|---|---|
| Narcisse Weesh-koob) | Owners under Indian Allotment |
| Joseph Weesh-koob) | |
| Cecilia Weesh-koob Boar-) | |
| grease) | |
| Catherine Scott (Mrs. Amyotto) | Claimants of an interest |
| Unknown heirs of) | |
| Narcisse Weesh-koob, deceased;) | |
| Unknown heirs of) | |
| Catherine Scott (Mrs. Amyotte,) deceased; | |
| M ^o L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| The United States of America | Holder of Fee in Trust |

Parcel 15 (61-1-47-3)-

All that part of the following described tract:

Southwest quarter of the northeast quarter ($SW\frac{1}{4}$ $NE\frac{1}{4}$) of section 34, township 63 north, range 5 east;

[fol. 63] which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the east line of said section 34, distant 1128 feet south of the northeast corner thereof; thence run southwesterly at an angle of $40^{\circ}20'$ with said east section line for a distance of 453.8 feet; thence deflect to the right on a $1^{\circ}30'$ curve, delta angle $15^{\circ}30'$ for a distance of 1033.3 feet; thence on tangent to said curve for a distance of 697 feet; thence deflect to the left on a $2^{\circ}12'$ curve, delta angle $18^{\circ}44'$, for a distance of 600 feet and there terminating;

containing 5.34 acres, more or less.

Names of persons interested in said Parcel 15 and nature of interest:

| Name | Nature of Interest |
|---|---|
| Narcisse Weesh-knob) | |
| Joseph Weesh-koob) | |
| Cecilia Weesh-koob Bear-) | Owners under Indian Allotment |
| grease) | |
| Catherine Scott (Mrs. Amyotte)) | |
| Unknown heirs of) | |
| Narcisse Weesh-koob, deceased) | Claimants of an interest |
| Unknown heirs of) | |
| Catherine Scott (Mrs. Amyotte,) deceased;) | |
| | |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| The United States of America | Holder of Fee in Trust |

Parcel 20 (61-1-47-3)-

All that part of the two following described tracts:

1. Government Lot 1 of section 26, township 63 north, range 5 east;

2. Northeast quarter of the southeast quarter (NE $\frac{1}{4}$ SE $\frac{1}{4}$) of section 26, township 63 north, range 5 east;

which lies within a distance of 200 feet on each side of the following described line:

[fol. 64] Beginning at a point on the east and west quarter line of section 25, township 63 north, range 5 east, distant 1497 feet east of the west quarter corner thereof; thence run southwesterly at an angle of 44°00' with said east and west quarter line for a distance of 1867.3 feet; thence deflect to the right on a 1°30' curve, delta angle 33°42', for a distance of 2000 feet and there terminating:

containing 14.10 acres, more or less.

Names of persons interested in said Parcel 20 and nature of interest:

| Name | Nature of Interest |
|------------------------------|---|
| Josetta Frost | Owner under Indian Allotment |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| The United States of America | Holder of Fee in Trust |

Parcel 23 (61-1-47-3)

All that part of the following described tract:

Southeast quarter of the southeast quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$) of section 24, township 63 north, range 5 east;

which lie within a distance of 200 feet on each side of the following described line:

Beginning at a point on the south line of said section 24, distant 872 feet west of the southeast corner thereof; thence run northeasterly at an angle of 43°40' with said south section line for a distance of 1500 feet and there terminating; excepting therefrom the right of way of existing highway; containing 11.43 acres, more or less.

Names of persons interested in said Parcel 23 and nature of interest:

[fol. 65]

| Name | Nature of Interest |
|------------------------------|---|
| John Caribo (May-ah-o-say) | Owner under Indian Allotment |
| Sah-gah-sheak | Claimants of an interest |
| John Mitchell | |
| Unknown heirs of | |
| John Mitchell, deceased; | |
| Unknown heirs of | |
| John Caribo, deceased; | |
| Mary Mitchell | |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minn. and Special Disbursing Agent. |
| The United States of America | Holder of Fee in Trust |

Parcel 24 (61-1-47-3)-

All that part of the two following described tracts:

1. Government Lots 4 and 5 of section 19, township 63 north, range 6 east;

2. Northwest quarter of the southwest quarter (NW $\frac{1}{4}$ SW $\frac{1}{4}$) of section 19, township 63 north, range 6 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the west line of said section 19, distant 1759.6 feet south of the west quarter corner thereof; thence run northeasterly at an angle of 44°24' with said west section line for a distance of 2614.5 feet; thence deflect to the right on a 1°00' curve, delta angle 10°00', for a distance of 200 feet and there terminating;

containing 23.29 acres, more or less.

Names of persons interested in said Parcel 24 and nature of interest:

[fol. 66]

| Name | Nature of Interest |
|----------------------------------|---|
| Sah-man-equay-gi i-bo | Owner under Indian Allotment - |
| Joseph Long Body (O tah tah gay) |) |
| Unknown heirs of Joseph |) |
| Long Body deceased; |) |
| Joseph Long Body, Jr. |) |
| Ah-zha-day-gwam-a beke, |) |
| (Mrs. John Zimmerman) |) |
| William Howensten |) |
| Unknown heirs of |) |
| William Howensten, |) |
| deceased; |) |
| Annie Howensten |) |
| Unknown heirs of |) |
| Annie Howensten, |) |
| deceased; |) |
| M. L. Burns |) |
| | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| The United States of America | Holder of fee in trust |

Parcel 25 (61-1-47-3)

All that part of the following described tract:

Government Lot 3 of section 19, township 63 north, range 6 east;

which lies within a distance of 200 feet on each side of the following described line:

Beginning at a point on the west line of said section 19, distant 1759.6 feet south of the west quarter corner thereof; thence run northeasterly at an angle of $44^{\circ}24'$ with said west section line for a distance of 2614.5 feet; thence deflect to the right on a $1^{\circ}00'$ curve, delta angle $10^{\circ}00'$, for a distance of 1000 feet; thence on tangent to said curve for a distance of 200 feet and there terminating;

containing 9.45 acres, more or less.

Names of persons interested in said Parcel 25 and nature of interest:

[fol. 67]

| Name | Nature of Interest |
|--------------------------|---|
| Nancy Thomas (Hunter) | Owner under Indian Allotment |
| M. L. Burns | As Superintendent of the Consolidated Chippewa Agency at Cass Lake, Minnesota, and Special Disbursing Agent |
| United States of America | Holder of Fee in Trust |

IV

"That the use for which said lands are proposed to be taken is a public use and said taking is authorized by law;

V

"That on March 12, 1936, Paul Quodonce executed a certain deed purporting to convey to the United States, in trust for the Grand Portage Band of Chippewa Indians, all of his right, title and interest in and to Parcel 5 above described; that the said conveyance was made subsequent to the filing of a Notice of Lis Pendens in the above entitled matter by the State of Minnesota and with notice of the pendency of this action, and that the said conveyance is void insofar as it affects the right of the State of Minnesota to proceed in this action, and the estate vested in the United States of America by the said conveyance is subject to the easement herein acquired by the State of Minnesota;

VI

"That the District Court of the State of Minnesota for the Eleventh Judicial District, Cook County, Minnesota, had jurisdiction of the above entitled action, and the said jurisdiction became vested in this Court by removal hereto.

"It Is Hereby Ordered That the petition of the State of Minnesota be, and the same hereby is, granted.

"It Is Further Ordered That Andrew Hedstrom, George Mayhew and Ed Toftey with Carl M. Sound and L. F. Lien as alternates, who are disinterested persons and residents of said county, be and they hereby are appointed commissioners to ascertain and report the amount of damages that will be sustained by the several owners of said lands on account of said taking; that said commissioners hold their first meeting in the office of the clerk of district court in the court house in Grand Marais, Minnesota, at two o'clock P. M., on Wednesday, the 3rd day of February, 1937; and [fol. 68] that the compensation of each of said commissioners be the sum of Ten Dollars (\$10.00) per day for each and every day occupied by them in the performance of their duties as such.

"It Is Further Ordered That the estate acquired by the petitioner in said lands shall be an easement for highway purposes, and that the several owners of said lands shall retain therein all the rights and privileges which appertain to ownership of the fee in said lands except as hereinafter provided, and subject and in subordination to the use of said lands as a public highway; but said petitioner shall not acquire any right in or to any buildings or structures on said premises, such buildings and structures to remain the property of the owner. the fee and to be moved off the right of way of said trunk highway in such manner and at such time as may be determined in these proceedings; and that the petitioner shall have the right to construct and maintain such temporary snow fences upon the tracts and parcels of land herein described and upon the lands adjacent thereto, as provided by law, and that the petitioner shall have the exclusive control and regulation of the culture and cutting of all grasses, shrubs, trees, and natural growth now existing on the lands being acquired herein and the planting of any grasses, shrubs and trees thereon.

"It Is Further Ordered That the United States of America be accorded an exception to each and all of the findings of the Court in this matter.

"Dated at Duluth, Minnesota, this 23 day of December, 1936.

By the Court.

Robert C. Bell, Judge, U. S. District Court."

IN UNITED STATES DISTRICT COURT

STIPULATION OF COUNSEL APPROVING BILL OF EXCEPTIONS

It is hereby stipulated and agreed, by and between the undersigned attorneys for the parties hereto, that in the foregoing the description of Petitioner's Exhibit 4 therein contained may be substituted for and in lieu of the original exhibit for the purposes of appeal to the United States Circuit Court of Appeals.

It is further stipulated that the foregoing statement of the evidence and proceedings upon the hearing on the presentation of the petition of the State of Minnesota in the [fol. 69] above entitled cause, consisting of 27 pages, be accepted, settled and allowed as a Bill of Exceptions or settled case, in the above entitled cause on appeal, composing all of the evidence offered and received of the proceedings, motions, requests and all objections, rulings and exceptions made, taken and granted at the said hearing, without further or other notice to any of the parties herein, and that an order may be made and entered by the Court in accordance herewith without any other or further proceedings.

Dated this 15th day of April, A. D. 1937.

George F. Sullivan, United States Attorney for the
District of Minnesota. Ordner T. Bundlie, Assistant
Attorney General, State of Minnesota.

IN UNITED STATES DISTRICT COURT

ORDER OF PROVING BILL OF EXCEPTIONS

Pursuant to the within Stipulation, heretofore entered into between the United States of America and the State of Minnesota,

It Is Hereby Ordered That the foregoing statement, consisting of 27 pages, be and the same is hereby settled and allowed as the Bill of Exceptions or settled case in the above entitled cause on appeal, composing all of the evidence offered and received of the proceedings, motions, requests and all objections, rulings and exceptions made, taken and

granted at the said hearing, without further or other notice to any of the parties herein.

Dated this 15 day of April, A. D. 1937.

By the Court.

Robert C. Bell, Judge, U. S. District Court.

[File endorsement omitted.]

[fol. 70] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed March 18, 1937

The United States of America, one of the respondents in the above entitled action, considering itself aggrieved by the order of the above named court, entered in the above entitled cause on the 23d day of December, 1936, and desiring to appeal from said order in said cause to the United States Circuit Court of Appeals for the Eighth Circuit, presents herewith its Notice of Appeal and Assignments of Error, no bond on appeal being required of Respondent under Section 1001 of the Revised Statutes of the United States (28 U. S. C. 870), this appeal being taken by the United States by the direction of the Attorney General of the United States as appears from the communication hereto attached and made a part hereof, and the respondent United States of America prays for an order of this court allowing said appeal and for a citation directed to the petitioner State of Minnesota, requiring it to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the city of St. Louis, Missouri, within forty (40) days from and after the date of said citation pursuant to said appeal.

United States of America, by George F. Sullivan,
United States Attorney for the District of Min-
nesota, and Attorney for Respondent United States
of America.

Signal Corps, United States Army

Received at

11 WVU B 37 JUS 1 Extra Priority.

Washington, D. C., 1259P. March 16, 1937.

U. S. Attorney, St. Paul, Minn.:

Appeal in State of Minnesota Versus Quodonce Etal in
 Order to Protect Rights of Government Prnding Decision
 Solicitor General Stop Should He Not Authorize Prosecu-
 [fol. 71] tion Appeal Later May Be Dismissed Stop Advise
 Department Promptly of Developments

Chambers 111P.

(Duplicate of telephone telegram.)

IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed March 18, 1937

To William S. Ervin, Attorney General, State of Minnesota,
 and Ordner T. Bundlie, Assistant Attorney General, At-
 torneys for Petitioner, 1246 University Avenue, St. Paul,
 Minnesota:

You will please take notice that the United States of
 America, one of the respondents in the above entitled action,
 considering itself aggrieved by the order of the Court made
 and entered on the 23d day of December, 1936, does hereby
 appeal to the United States Circuit Court of Appeals for
 the Eighth Circuit from said judgment.

This appeal is taken upon questions of fact and of law and
 is based upon the files, records, assignments of error and
 other papers filed herein.

Dated this 18th day of March, A. D. 1937.

George F. Sullivan, United States Attorney for the
 District of Minnesota, and Attorney for Respond-
 ent United States of America.

Service of the foregoing Notice of Appeal is hereby ad-
 mitted this 18 day of March, A. D. 1937.

Ordner T. Bundlie, Assistant Attorney General, At-
 torney for Petitioner.

[File endorsement omitted.]

[fol. 72] IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR—Filed March 18, 1937

Comes now the United States of America, one of the respondents in the above entitled action, by George F. Sullivan, its United States Attorney for the District of Minnesota, and in the above entitled cause files the following Assignments of Error upon this its appeal from the order entered by this Honorable Court on the 23d day of December, 1936.

I

The court erred in making and entering in the above entitled action its order dated December 23, 1936.

II

The court erred in denying the motion of the United States of America to dismiss the above entitled action for want of jurisdiction.

III

The court erred in denying the motion of the United States to dismiss the above entitled action with particular reference to the tract designated as parcel No. 5 and more particularly described in the petition of the State of Minnesota.

IV

The court erred in finding and adjudging that the consent of the United States to bring these proceedings against Indian allottees has been expressly granted and given by the United States to the State of Minnesota, pursuant to Title 25, U. S. C., Section 357, and that the United States accordingly is not a necessary party.

V

The court erred in finding and adjudging that the taking of the lands described in the petition by the State of Minnesota is authorized by law.

VI

The court erred in finding and adjudging that on March 12, 1936, Paul Quodonce executed a certain deed purport-

ing to convey to the United States in trust for the Grand Portage band of Chippewa Indians, all of his right, title and interest in and to parcel No. 5, as described, in the petition of the State of Minnesota; that the said conveyance was made subsequent to the filing of Notice of Lis Pendens in the above entitled matter by the State of Minnesota and with notice of the pendency of this action, and that the said [fol. 73] conveyance is void insofar as it affects the right of the State of Minnesota to proceed in this action and the estate vested in the United States of America is subject to the easement acquired by the State of Minnesota by virtue of these proceedings.

VII

The court erred in finding and adjudging that the District Court of the State of Minnesota for the Eleventh Judicial District, Cook County, Minnesota, had jurisdiction of the above entitled action and that the said jurisdiction became vested in the United States District Court by removal thereto.

VIII

The court erred in granting the petition of the State of Minnesota.

Wherefore, the United States of America, one of the respondents in the above entitled action prays that the order entered by the court in the above entitled action on December 23, 1936, be in all respects reversed, set aside and vacated, and that the above entitled cause be remanded for such proceedings in the trial court as may be consistent with justice.

Dated at St. Paul, Minnesota, this 18th day of March, A. D. 1937.

George F. Sullivan, United States Attorney for the District of Minnesota, and Attorney for Respondent United States of America.

Service of the foregoing Assignments of Error is hereby admitted this 18th day of March, A. D. 1937.

Ordner T. Bundlie, Assistant Attorney General, Attorney for Petitioner.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

**STIPULATION THAT ASSIGNMENT OF ERRORS MAY BE AMENDED
AT ANY TIME DURING TERM OF COURT AND APPROVAL
THEREOF BY DISTRICT JUDGE—Filed March 18, 1937**

It is hereby stipulated by and between George F. Sullivan, United States Attorney for the District of Minnesota, and [fol. 74] attorney for respondent United States of America, and Ordner T. Bundlie, Assistant Attorney General, attorney for petitioner, that at any time during the term of court in which the appeal of the United States of America in the above entitled action is allowed, and at any time prior to the filing of briefs in the United States Circuit Court of Appeals for the Eighth Circuit, that the foregoing Assignments of Error may be amended by adding to, altering or eliminating any or all of the said assignments or any part thereof.

George F. Sullivan, United States Attorney for the District of Minnesota, and Attorney for Respondent United States of America. Ordner T. Bundlie, Assistant Attorney General, Attorney for Petitioner.

ORDER

Upon the foregoing, it is hereby
Order That at any time during the term of court in which the appeal of the United States of America in the above entitled action is allowed, and at any time prior to the filing of briefs in the United States Circuit Court of Appeals for the Eighth Circuit, the foregoing Assignments of Error may be amended by adding to, altering or eliminating any or all of the said assignments or any part thereof.

Dated this 18th day of March, A. D. 1937.

Robert C. Bell, Judge, U. S. District Court, District of Minnesota.

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL, ETC.—Filed March 18, 1937

The United States of America, one of the respondents in the above entitled cause, having duly presented its petition for appeal and having duly served and filed its notice of appeal and assignments of error, and no bond on appeal being required of the United States of America under Section 1001 of the Revised Statutes of the United States (28 [fol. 75] U. S. C. 870), the court being satisfied that this appeal is taken by direction of the Attorney General of the United States as appears from the communication attached to and made a part of the petition for appeal herein, the prayer of the United States of America is hereby granted and accordingly

It Is Ordered That the appeal of the United States of America, one of the respondents in the above entitled action be and the same is hereby allowed.

Dated at Mpls., Minnesota, this 18 day of March, A. D. 1937.

Robert C. Bell, Judge, U. S. District Court, District of Minnesota.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

SUPPLEMENTAL ASSIGNMENTS OF ERROR—Filed April 17, 1937

Comes now the United States of America, one of the respondents in the above entitled action, by George F. Sullivan, its United States Attorney for the District of Minnesota, and in the above entitled cause, files the following Supplemental Assignments of Error upon this its appeal from the order entered by this Honorable Court on the 23rd day of December, 1936:

IX

The court erred in assuming jurisdiction of this action.

X

The court erred in ordering and declaring that the State of Minnesota shall have an easement for highway purposes in and to lands described in the petition, and that the rights and privileges which appertain to the owners of said lands shall be subject and subordinated to the use of the State of Minnesota as a public highway, and in ordering and declaring in effect that the buildings and structures upon the said lands shall be subject to be moved off the purported right-of-way of said highway in such manner and at such time as may be determined in these proceedings, and that the [fol. 76] State of Minnesota shall have the right to construct and maintain such temporary snow fences upon the tracts and parcels of land described in the petition and upon the lands adjacent thereto as provided by law, and that the State of Minnesota shall have the exclusive control and regulation of the culture and cutting of all grasses, shrubs, trees and natural growth now existing on the lands purported to be acquired by the State herein and the planting of grasses, shrubs and trees thereon.

Wherefore, the United States of America, one of the respondents in the above entitled action, prays that the order entered by the court in the above entitled action on December 23, 1936, be in all respects reversed, set aside and vacated, and that the above entitled cause be remanded for such proceedings in the trial court as may be consistent with justice.

Dated at St. Paul, Minnesota, this 15th day of April, A. D. 1937.

George F. Sullivan, United States Attorney for the District of Minnesota, and Attorney for Respondent United States of America.

Service of the foregoing is hereby admitted this 15 day of April, A. D. 1937.

Ordner T. Bundlie, Assistant Attorney General, Attorney for Petitioner.

Citation, in usual form, showing service on Ordner T. Bundlie, filed March 19, 1937, omitted in printing.

[fol. 77] IN UNITED STATES DISTRICT COURT

ELECTION AS TO PRINTING OF RECORD—Filed April 17, 1937

To the Clerk of the United States District Court for the District of Minnesota:

In pursuance of the praecipe therefor filed in the above-entitled cause you are hereby respectfully requested to prepare the transcript in typewritten form on the appeal by the United States of America, one of the Respondents in the above-entitled cause, from the order of the court entered on the 23d day of December, 1936, in said cause, in order that said transcript may be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit at the city of St. Louis, Missouri.

And the said Respondent United States of America hereby elects to have the record in said cause on appeal [fol. 78] as aforesaid printed under the supervision of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Dated April 16, 1937.

George F. Sullivan, United States Attorney.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR TRANSCRIPT—Filed April 17, 1937

It is hereby stipulated and agreed by and between the undersigned respective counsel for the Petitioner above named and the Respondent United States of America that the Clerk of the United States District Court for the District of Minnesota be and is hereby directed to prepare and certify a transcript of the record in the above-entitled cause for the use of, and to make a return to, the Circuit Court of Appeals for the Eighth Circuit by including therein the following:

1. Petition.
2. Notice with returns of service thereon.
3. Petition for Removal.
4. Stipulation.

5. Order of Removal.
6. Certificate of Clerk of District Court, Cook County, Minnesota, attached to transcript.
7. Affidavit of non-residence.
8. Affidavit of Publication.
9. Bill of Exceptions or settled case together with Stipulation and Order allowing same.
10. Notice of Appeal.
11. Assignments of Error.
12. Stipulation and Order providing for amendments to Assignments of Error.
13. Petition for Appeal.
14. Order allowing Appeal.
15. Citation on Appeal.
16. Supplemental Assignments of Error.
- [fol. 79] 17. Any orders hereafter made enlarging citation.
18. Election as to printing of record.
19. This praecipe for transcript together with the admissions of service and dates endorsed on above-mentioned papers by attorney for above-named Petitioner.

George F. Sullivan, United States Attorney. Ord-
ner T. Bundlie, Assistant Attorney General, Attor-
ney for Petitioner, State of Minnesota.

Dated at St. Paul, Minnesota, this 16th day of April,
1937.

[File endorsement omitted.]

Clerk's certificate to foregoing transcript omitted in
printing.

[fol. 80] Appearances of counsel omitted in printing.

[fol. 81] IN UNITED STATES CIRCUIT COURT OF APPEALS

**Statement of Facts and Motion of Appellee to Dismiss
Appeal—Filed April 28, 1937**

To The United States of America, George F. Sullivan,
United States Attorney, Lewis N. Evans, Assistant
United States Attorney, and E. E. Koch, Clerk of the
above named Court:

STATEMENT OF FACTS.

The State of Minnesota, by its Attorney General, instituted condemnation proceedings in the District Court, Eleventh Judicial District, Cook County, Minnesota, for the purpose of acquirement of certain lands for highway purposes in Cook County. The lands sought to be acquired in the State's condemnation proceedings, which is entitled, "State of Minnesota by Harry H. Peterson, its Attorney General, vs. Paul Quodonce, et al.", traverse lands allotted in severalty to the Indians in said county, which lands consisting of nine (9) parcels, form a part of the Chippewa [fol. 82] Indian Reservation. The Commissioner of Highways for the State of Minnesota duly designated the permanent location of Trunk Highway No. 61, also known as United States Highway No. 61, and the lands sought to be acquired would form the right of way for a portion of said trunk highway, by order pursuant to Section 2554, Subdivision 4a, Mason's Minnesota Statutes for 1927. Prior to the hearing on the petition, the United States of America, above appellant, through George F. Sullivan, its District Attorney, stipulated with the State of Minnesota for the removal of said proceedings to the United States District Court, District of Minnesota, Fifth Division, and the files and proceedings were thereupon transferred to said Court at Duluth, Minnesota. The stipulation (typewritten transcript of Record, page 24) provided that the United States of America appeared generally for the Indian allottees and that when said proceedings was so transferred that the State might have the relief sought for by its petition.

That the hearing on the petition in condemnation came on for hearing before the Honorable Robert C. Bell, one of the judges of said court on September 16, 1936, at Duluth, Minnesota. At the time of said hearing the State presented said

petition with the necessary exhibits as referred to in the typewritten transcript of the record, and made a prima facie case for the court and moved for the granting of the petition. The above appellant appeared generally for the Indians and also specially for the purpose of making a motion for a dismissal of said proceedings, based upon the grounds:

1. That this is an action against the United States and that consent had not been given thereto.

[fol. 83] 2. That the State court where the procedure was first brought had no jurisdiction over the United States.

3. That the United States had not been duly served with process in the manner prescribed by law.

4. That the action be dismissed with particular reference to the tract described in the petition of the State as Parcel 5, allotted to Paul Quodonce, based on a purported conveyance by said Quodonce to the Chippewa Tribe.

Said Federal Court after hearing arguments of counsel and the submission of filing of briefs by respective counsel, did, under date of December 23, 1936, make and file its order overruling all of the objections of the appellant, United States of America, and granting in all things the State's petition (typewritten transcript, page 55), and appointing commissioners and alternates for the appraisal of said lands and the filing of their written report to the Court as provided by law.

The above appellant on March 18, 1937, served upon appellee notice of appeal to the above named court from the order of court granting in all things the State's petition in condemnation.

NOTICE OF MOTION OF DISMISSAL OF APPELLANT'S APPEAL

You, and each of you, will please take notice that the appellee will, upon all the files, records, assignments of error and the typewritten record of the proceedings herein, on Friday, the 7th day of May, 1937, at ten o'clock A. M. of said day or as soon thereafter as counsel can be heard, move the above named court for an order dismissing appellant's appeal from the order of the Honorable Robert C. Bell, Judge [fol. 84] of the United States District Court, District of Minnesota, Fifth Division, made and filed with the Clerk thereof

at Duluth, Minnesota, on the 23rd day of December, 1936, granting the petition of the appellee for the condemnation of certain lands in Cook County, Minnesota for state trunk highway purposes. That said motion will be heard before the above named court at the regular session thereof in the court rooms in the Federal Building, City of Saint Paul, County of Ramsey, State of Minnesota, at the time above set forth.

GROUND S FOR MOTION OF DISMISSAL

The grounds and reasons for appellee's motion for dismissal of appellant's appeal are:

1. That the order granting the appellee's condemnation is not an appealable order.
2. That the appeal is premature and untimely made.
3. That the appeal is contrary to law.
4. That the above named Court has no jurisdiction over the parties hereto or the subject matter.

Dated at Saint Paul, Minnesota, April 28, 1937

William S. Ervin, Attorney General; Ordner T. Bundlie, Assistant Attorney General, 1246 University Avenue, Saint Paul, Minnesota, Attorneys for the Appellee.

[fol. 85] Due service of the within Motion, etc., is hereby admitted at St. Paul, Minn. this 28th day of April 1937.

George F. Sullivan, U. S. Attorney, by Lewis N. Evans, Assistant U. S. District Attorney.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER DENYING MOTION OF APPELLEE TO DISMISS, WITHOUT PREJUDICE, ETC.—May 17, 1937

The Court having considered the motion of appellee to dismiss the appeal from the District Court in this cause, the briefs and oral argument of counsel in support of and in opposition thereto, It is now here ordered by this Court that the said motion, be, and it is hereby, denied, without preju-

dice to the right of the appellee to renew the same in connection with the presentation of the merits of the case if it shall be so advised.

[fol. 86] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER OF SUBMISSION—November 20, 1937

This cause having been called for hearing in its regular order, argument was commenced by Mr. Victor E. Anderson, United States Attorney, and continued by Mr. Thomas E. Harris, Special Attorney Department of Justice, for appellant, continued by Mr. Ordner T. Bundlie for appellee and concluded by Mr. Thomas E. Harris, Special Attorney Department of Justice, for appellant.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

[fol. 87] IN UNITED STATES CIRCUIT COURT OF APPEALS,
EIGHTH CIRCUIT, NOVEMBER TERM, A. D. 1937

No. 10,905

UNITED STATES OF AMERICA, Appellant,

vs.

STATE OF MINNESOTA, by its Attorney General, Appellee

Appeal from the District Court of the United States for the
District of Minnesota

Mr. Victor E. Anderson, United States Attorney, and Mr. Thomas E. Harris, Special Attorney, Department of Justice (Mr. Lewis N. Evans, Assistant United States Attorney, was with them on the brief) for appellant.

Mr. Ordner T. Bundlie, Assistant Attorney General (Mr. William S. Ervin, Attorney General, State of Minnesota, was with him on the brief) for appellee.

Before Stone, Sanborn and Woodrough, Circuit Judges

OPINION—March 12, 1938

WOODROUGH, Circuit Judge, delivered the opinion of the court:

This appeal is taken by the United States to reverse certain orders made by the District Court in highway condemnation proceedings instituted in the name of and on behalf of the State of Minnesota.

[fol. 88] It appears that by Article XVI of the Constitution of Minnesota, Trunk Highway No. 61 or Constitutional Highway No. 1 was designated as beginning at a point on the boundary line between the States of Iowa and Minnesota and extending northerly through the City of St. Paul, thence northerly through the City of Duluth and thence northeasterly to a point on the boundary line between the State of Minnesota and the Province of Ontario in the Dominion of Canada. In the early part of 1934 the Highway Commissioner determined upon a relocation of that part of the highway between the northern boundary line of the state and the Reservation River in Cook County, Minnesota, and on February 15, 1934, he filed the centre line and width orders designating the relocation of the highway so as to pass over and across the Grand Portage Indian Reservation. Thereupon a petition in due form was filed in the name of the State in the proper district court of the state in the matter of the condemnation of the lands needed for the relocation of the highway, and it appeared on the face of the petition that the several tracts of land sought to be condemned and taken for the highway were lands within the Indian Reservation allotted under Indian allotments and that the United States was the holder of the fee of the several tracts in trust for the Indians. Removal was taken to the federal court and the cause having come on to be heard, the State presented the petition in condemnation and the relocation orders and maps and moved for the allowance of its petition and for the appointment of appraisers to appraise and report their awards. There was no showing that authority for the construction of the highway across the Indian lands and reservation had been obtained from the Secretary of the Interior of the United States.

The United States appeared specially by the United States District Attorney for Minnesota and moved that the action be dismissed on the ground among others that the court was without jurisdiction for the reason that the United States had not consented to the maintenance of the condemnation suit against it. The trial court reached the conclusion:

"That the consent of the United States to bring these proceedings against Indian allottees has been expressly granted and given by the United States to the State of Minnesota, pursuant to 25 United States Code Annotated, Section 357, and that the United States accordingly is not [fol. 89] a necessary party respondent to these proceedings."

The motion of the United States to dismiss was therefore denied and exception saved.

The government appealed and motion to dismiss the appeal was denied by this court. The appeal presents the question whether the State of Minnesota has the power without the consent of the Secretary of the Interior to condemn and take the allotted Indian lands held by the United States in trust for the Indians and to open up a highway right of way across the Indian Reservation.

The provisions of the Constitution pertinent to the powers of the federal government in relation to Indian tribes, Indians, Indian reservations and Indian lands are:

Article 2, Sec. 2, Clause 2. . . . [The President] shall have power by and with the advice and consent of the Senate to make treaties provided two thirds of the Senators present concur.

Article 1, Sec. 8, Clause 1-3. The Congress shall have power to . . . regulate commerce with . . . the Indian tribes.

Article IV, Sec. 3, Clause 2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

Pursuant to the constitutional provisions the Indian lands have been drawn completely within the sovereignty of the United States and the highest dominion over them is vested

in the federal government.¹ That government has undertaken the guardianship of the Indians and has reserved to itself the right to determine the manner in which the guardianship has been and shall be carried out. It has retained in itself title to the lands it permits the Indians to occupy, the authority to make laws and regulations respecting the territory and the broad power to legislate and act for the protection of the Indians collectively and individually wherever they may be within the territory of the United States. It is apparent that to enter upon and appropriate [fol. 90] the individual Indian lands by the establishment of a highway easement over them and through the Indian reservation would directly and substantially affect the title of the United States in and to the lands and its dominion over them. It would restrict the government in its regulations concerning the lands, embarrass it in using the land and substantially interfere with its right of disposal.² We think it is clear under the decisions that the State of Minnesota would not have power to maintain its suit for condemnation against the United States in the absence of consent given by that government. *U. S. v. McGowan*, — *U. S.* — (January 3, 1938); *Cherokee Nation v. Ry.*, 135 U. S. 656; *Surplus Trading Co. v. Cook*, 281 U. S. 647; *Utah Power & Light Co. v. U. S.*, 243 U. S. 389.

In *Cherokee Nation v. Ry.*, 135 U. S. l. c. 656, the Supreme Court considered the question of whether the effect of state power of eminent domain was to preclude federal powers of eminent domain deemed inconsistent; the court concluded federal power was not lost, quoting from Mr. Justice Bradley in *Stockton v. R. R.*, 32 Fed. 19,

"The argument based upon the doctrine that the States have the eminent domain or highest dominion in the lands comprised within their limits, and that the United States have no dominion in such lands, cannot avail to frustrate

¹ *U. S. v. McGowan*, — *U. S.* — (Jan. 3, 1938); *U. S. v. Minnesota*, 270 U. S. 181; *Brewer-Elliott v. U. S.*, 260 U. S. 77; *Minnesota v. Hitchcock*, 185 U. S. 373; *Cherokee Nation v. Ry.*, 135 U. S. 641.

² *Clairmont v. U. S.*, 225 U. S. l. c. 556; *Hallowell v. U. S.*, 221 U. S. 317, 323-4; *U. S. v. Sutton*, 215 U. S. 291; *Utah & N. Ry. v. Fisher*, 116 U. S. 28; *Cf. U. S. v. Unzeuta*, 281 U. S. 138.

the supremacy given by the Constitution to the government of the United States in all matters within the scope of its sovereignty. This is not a matter of words, but of things.

Whatever may be the necessities or conclusions of theoretical law as to eminent domain or anything else, it must be received as a postulate of the Constitution that the government of the United States is vested with full and complete power to execute and carry out its purposes."

The law that governs Indian Reservations and lands is discussed in *Surplus Trading Co. v. Cook*, 281 U. S. 647, 650, and in *U. S. v. McGowan*, — U. S. — (January 3, 1938). In the former case the court said,

"It is not unusual for the United States to own within a State lands which are set apart and used for public purpose [fol. 91] poses. Such ownership and use without more do not withdraw the lands from the jurisdiction of the State. On the contrary, the lands remain part of her territory and within the protection of her laws, save that the latter cannot affect the title of the United States or embarrass it in using the lands or interfere with its right of disposal."

"A typical illustration is found in the usual Indian Reservation set apart within a State as a place where the United States may care for its Indian wards and lead them into habits and ways of civilized life" (Emphasis supplied.)

In *U. S. v. McGowan*, the court said,

"Congress alone has the right to determine the manner in which this country's guardianship over the Indians shall be carried out, (citing in footnote, *U. S. v. Sandoval*, 231 U. S. 28)"

"The government retains title to the lands which it permits the Indians to occupy. The government has authority to enact regulations and protective laws respecting this territory. (Citing in footnote, *Hallowell v. U. S.*, 221 U. S. 317; Constitution, Art. IV, Sec. 3, Cl. 2). . . . Congress possesses the broad power of legislating for the protection of the Indians wherever they may be within the territory of the United States *United States v. Ramsey*, 271 U. S. 471."

In *Utah Power & Light Co. v. U. S.*, 243 U. S. 389, certain States filed brief as amici curiae to urge upon the Supreme Court the proposition that

"The existence of easements of a public nature over vacant federal lands does not interfere with the disposal of such lands by the federal government, but is in aid thereof; and the claim made by the States of the right to control the creation and continuance of such easements, within their respective territorial jurisdictions, does not conflict with the power of Congress 'to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States'"; and further that the matter was for state police power, not for Congress (l. c. p. 400, 401) But the Supreme Court held that the defendant power companies must comply with the regulations of the Secretary of the Interior or move off the land which had [fol. 92] been placed (after company occupancy in some instances) in a federal forest reservation; it held further that state authority of eminent domain could not justify the presence of the companies on government owned land, (saying, p. 404, 405)

"Not only does the Constitution (Art. IV, Sec. 3, Cl. 2) commit to Congress the power 'to dispose of and make all needful regulations and rules respecting' the lands of the United States, but the settled course of legislation, congressional and state, and repeated decisions of this court have gone upon the theory that the power of Congress is exclusive and that only through its exercise in some form can rights in lands belonging to the United States be acquired. True, for many purposes a State has civil and criminal jurisdiction over lands within its limits belonging to the United States, but this jurisdiction does not extend to any matter that is not consistent with full power in the United States to protect its lands, to control their use and to prescribe in what manner others may acquire rights in them. Thus while the State may punish . . . etc. . . . , it may not tax the lands themselves or invest others with any right whatever in them. (Citing cases.) From the earliest times Congress by its legislation, applicable alike in the States and Territories, has regulated in many particulars the use by others of the lands of the United States, has prohibited, etc. . . . AND HAS PROVIDED FOR AND CONTROLLED THE ACQUISITION OF RIGHTS OF WAY OVER THEM

FOR HIGHWAYS, railroads, . . . and the like. The States and the public have almost uniformly accepted this legislation as controlling, and in the instances where it has been questioned in this court its validity has been upheld and its supremacy over state enactments sustained. (Citing cases.)

"It results that state laws, including those relating to the exercise of the power of eminent domain, have no bearing upon a controversy such as is here presented, save as they may have been adopted or made applicable by Congress." (Emphasis supplied.)

We turn to the contention that Congress gave its consent to these proceedings in condemnation of the Indian lands for highway purposes by the Act of Congress of March 3, 1901, 31 Stat. 1084 and the concluding provision of Section 3, of the Act.

[fol. 93] The Act of March 3, 1901, was the Indian Appropriation Act making appropriation for the fiscal year 1902, and provisions were incorporated in it concerning the construction of telephone and telegraph lines over and through Indian reservations under regulations to be prescribed by the Secretary of the Interior and also provisions applicable to condemnation or other procedure by State or local authorities for the opening and establishment of public highways through any Indian reservation, over allotted Indian lands. The provision which we deem applicable and controlling as to such highway condemnation proceedings and the consent of the United States therefor reads:

"Section 4 (25 U. S. C. 311) Opening Highways:

"The Secretary of the Interior is authorized to grant permission, upon compliance with such requirements as he may deem necessary, to the proper State or local authorities for the opening and establishment of public highways, in accordance with the laws of the State or Territory in which the lands are situated, through any Indian reservation or through any lands which have been allotted in severalty to any individual Indian under the laws or treaties but which have not been conveyed to the allottee with full power of alienation."

The plain intendment of this section is that the consent of the United States to the maintenance of condemnation pro-

ceedings to open up highways through the Indian reservation and the allotted lands is not given but is withheld except upon permission granted by the Secretary of the Interior. Such was the conclusion of the Circuit Court of Appeals of the 4th Circuit upon consideration of this provision of the act.

In *U. S. v. Colvard*, 89 Fed. (2d) 312, that court held that it was not only the right, but the duty of the United States to enjoin individuals from building a highway across lands held by the United States in trust for two Indians. The individuals had secured a condemnation of the lands under state authority, but the court held that the United States was not bound by the condemnation proceedings because it was not a party thereto, and because the state courts (which had held themselves devoid of jurisdiction against the United States in contract cases) had "no jurisdiction of proceedings affecting land held by the United States in trust for the Indians." The court said,

[fol. 94] "If a roadway over the Indian lands was desired, application should have been made to the Secretary of the Interior pursuant to provisions of the Act of March 3, 1901, Sec. 4, 31 Stat. 1058, 1084 (25 U. S. C. A. 311).

"A right of way could no more be acquired over these lands by proceedings against the Indians than title to lands embraced in a government forest could be tried by suit against the forester, nor than post office property could be condemned for purposes of a street by proceedings against the postmaster."

When the concluding provision of Section 3 of the Act of March 3, 1901, relied on by the state is read in connection with its context, the rest of Section 3, it becomes apparent that the provision does not and was not intended to conflict with or to withdraw the conditions laid down in Section 4 of the Act, *supra*, upon which the United States consented to proceedings to open up highways through allotted Indian lands. Section 3 reads:

"The Secretary of the Interior is authorized and empowered to grant a right of way, in the nature of an easement, for the construction, operation, and maintenance of telephone and telegraph lines and offices . . . through an Indian Reservation, . . . or through lands which have been allotted in severalty to any individual Indian under

any law or treaty, but which have not been conveyed to the allottee with full power of alienation, upon the terms and conditions herein expressed. No such lines shall be constructed across Indian lands, as above mentioned, until authority therefore has first been obtained from the Secretary of the Interior, and the maps of definite location of the lines shall be subject to his approval.

"The compensation to be paid the tribes in their tribal capacity and the individual allottees for such right of way through their lands shall be determined in such manner as the Secretary of the Interior may direct, and shall be subject to his final approval.

"Lands allotted in severalty to Indians may be condemned for any public purpose under the laws of the State or Territory where located in the same manner as land owned in fee may be condemned, and the money awarded in damages shall be paid to the allottee."

[fol. 95] The context shows that the concluding provision relates merely to permissive procedure in authorized suits for condemnation of allotted Indian lands. The power to make such condemnation for the opening of highways remains conditional as provided in Section 4, *supra*.

The United States not having consented to the maintenance of the condemnation suit of the State against it, the Court is without jurisdiction to proceed. *Morrison v. Work*, 266 U. S. 481, 485, 486; *U. S. v. Colvard* (C. C. A. 4) 89 Fed. (2d) 312; *Turner v. U. S.*, 248 U. S. 354, 359; *U. S. v. Babcock*, 250 U. S. 328, 331; see *Wood v. Phillips* (C. C. A. 4) 50 Fed. (2d) 714; *Compagnie Etc. v. Canal Zone* (C. C. A. 5) 90 Fed. (2d) 225; *U. S. v. Turner* (C. C. A. 8) 47 Fed. (2d) 86; *Boeing Air T. v. Farley* (App. D. C.) 75 Fed. (2d) 765; *T. W. A. v. Farley* (C. C. A. 2) 71 Fed. (2d) 288. Cf. *Minnesota v. Hitchcock*, 185 U. S. 1, c. 385 seq.

The fact that removal from the state court to the federal court was obtained by the United States Attorney through stipulation did not effect a general appearance. *Employers' Corp. v. Bryant*, 299 U. S. 374, 377; *Lambert Run Coal Co. v. B. & O. R. R.*, 258 U. S. 377. The District Attorney had no power to waive conditions or limitations imposed by statute in respect of suits against the United States. *Munro v. U. S.* — U. S. — (January 31, 1938); *Stanley v. Schwalby*, 162 U. S. 255, 270; *Finn v. U. S.*, 123 U. S. 227.

Reversed with directions to dismiss.

[fol. 96] IN UNITED STATES CIRCUIT COURT OF APPEALS,
EIGHTH CIRCUIT

No. 10905

UNITED STATES OF AMERICA, Appellant

vs.

STATE OF MINNESOTA, by Its Attorney General

JUDGMENT—March 12, 1938

Appeal from the District Court of the United States for
the District of Minnesota.

This cause came on to be heard on the transcript of the
record from the District Court of the United States for
the District of Minnesota, and was argued by counsel.

On Consideration Whereof, it is now here ordered and
adjudged by this Court, that the judgment of the said Dis-
trict Court, in this cause, be, and the same is hereby, re-
versed without costs to either party in this Court.

It is further ordered by this Court that this cause, be,
and the same is hereby remanded to the said District Court
with directions to dismiss.

[fol. 97] Clerk's certificate to foregoing transcript omitted
in printing.

[fol. 98] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 10, 1938

The petition herein for a writ of certiorari to the United
States Circuit Court of Appeals for the Eighth Circuit is
granted. And it is further ordered that the duly certified
copy of the transcript of the proceedings below which ac-
companied the petition shall be treated as though filed in
response to such writ.

Endorsed on cover: File No. 42,558. U. S. Circuit Court
of Appeals, Eighth Circuit. Term No. 73. State of Min-
nesota, by its Attorney General, petitioner, vs. The United
States of America. Petition for a writ of certiorari and
exhibit thereto. Filed May 31, 1938. Term No. 73, O. T.
1938.

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